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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB71

Notice of Confirmation of Direct Final Rule

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule establishing rules and regulations to administer the Treasury Rate Direct Loan Program, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on December 26, 2001 (66 FR 66293) is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Chief, Policy Analysis and Loan Management Staff, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4041 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: (202) 720–0424, FAX (202) 690–0717, E-mail: *rellinge@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In fiscal year 2001, Congress provided funding to establish a Treasury rate loan program to address the backlog of qualified loan applications for insured municipal rate electric loans from RUS. RUS administered the Treasury rate loan program in a manner substantially the same as it administered the municipal rate program under a Notice of Funding Availability (NOFA) published in the **Federal Register** at 65 FR 80830 on December 22, 2000. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76) authorizes a Treasury rate electric loan program of $750 million for FY 2002. RUS is amending its regulations to establish rules and regulations to administer the Treasury rate loan program.

Confirmation of Effective Date

This is to confirm the effective date of February 11, 2002, 7 CFR part 1710, Treasury Rate Direct Loan Program, published in the **Federal Register** on December 26, 2001, at 66 FR 66293.

Dated: January 29, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–3288 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–121–1]

Limited Ports of Entry for Pet Birds, Performing or Theatrical Birds, and Poultry and Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations regarding ports designated for the importation of pet birds, performing or theatrical birds, and poultry and poultry products by removing Boston, MA, from the lists of limited ports of entry. Very few of these animals or products are imported through the port of Boston, MA, as importers most often use other limited ports of entry to bring these animals and products into the United States. This action will update the regulations by removing an underutilized port from the lists.

DATES: This rule will be effective on April 15, 2002 unless we receive written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed by March 14, 2002.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 01–121–1, 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. 01–121–1. If you use 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. 01–121–1'' on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93, ''Importation of Certain Animals, Birds, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers'' (referred to below as the regulations), prescribe, among other things, conditions for importing pet birds, performing birds or theatrical birds, and poultry and poultry products into the United States. Section 93.102(d) contains a list of limited ports of entry

for pet birds imported into the United States under the provisions of § 93.101(c)(1) or § 93.101(c)(2) and for performing or theatrical birds imported under the provisions of § 93.101(f). Section 93.203(d) contains a list of limited ports of entry that are designated as having inspection facilities for the entry of poultry and poultry products such as poultry test specimens, or hatching eggs and day-old chicks which do not appear to require restraint and holding inspection facilities.

This rule will amend § 93.102(d) and § 92.203(d) in accordance with the procedures explained below under ''Dates.'' The amendments will remove Boston, MA, from both lists of limited ports of entry. Very few pet birds, performing birds, theatrical birds, poultry, or poultry products are currently imported through the port of Boston, MA. Importers are opting to use other limited ports of entry to bring these commodities into the United States, so we do not believe that removing Boston, MA, as a limited port for the entry of pet birds, performing or theatrical birds, and poultry and poultry products will have any negative effects on U.S. importers of these animals and products.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on April 15, 2002, unless we receive written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed by March 14, 2002.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule will remove Boston, MA, as a limited port of entry for the importation into the United States of pet birds, performing or theatrical birds, and poultry and poultry products. Very few of these animals or products are imported through the port of Boston, MA, as importers most often use other limited ports of entry to bring these animals and products into the United States. Therefore, we expect that this action will have no economic impact on any entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is amended by removing the words ''Boston, MA;''.

§ 93.203 [Amended]

3. In § 93.203, paragraph (d) is amended by removing the words ''Boston, Massachusetts;''.

Done in Washington, DC, this 6th day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–3343 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–153–AD; Amendment 39–12635; AD 2002–02–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, and corrective action if necessary. This action is necessary to prevent failure of the spring locking function of the slider mechanism due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on October 12, 2001 (66 FR 52068). That action proposed to require repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, 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.

Explanation of Change to Final Rule

The FAA's intention is for the follow-on actions in paragraphs (a)(1) and (a)(2) of this AD (application of corrosion inhibitor to the sliders, and repair or replacement of the slider, if necessary) to be accomplished before further flight after accomplishment of the detailed visual inspection and operational check in paragraph (a) of this AD. However, the words ''before further flight'' were inadvertently omitted from paragraphs (a)(1) and (a)(2) of the proposal. The FAA finds that our intent in those paragraphs is clear based on the fact that the All Operators Telexes referred to in this AD clearly include the application of corrosion inhibitor as part of the inspection procedures, and also explicitly indicate that repair or replacement of the slider, if necessary, must be accomplished before further flight. However, for further clarification, the FAA has revised paragraphs (a)(1) and (a)(2) of this AD to state that the actions in those paragraphs are required ''before further flight.''

Conclusion

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

Cost Impact

The FAA estimates that 9 Model A330 series airplanes of U.S. registry will be affected by this AD. No Model A340 series airplanes affected by this action are currently on the U.S. Register.

It will take approximately 3 work hours per airplane to accomplish the required inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,620, or $180 per airplane, per inspection cycle.

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:

2002–02–07 Airbus Industrie: Amendment 39–12635. Docket 2001–NM–153–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spring locking function of the slider due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation, accomplish the following:

Inspection

(a) Within 18 months since date of manufacture, or within 550 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection and an operational check of the spring function of the emergency exit door slider mechanism, in accordance with Airbus All Operators Telex (AOT) A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001.

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

(1) If all sliders lock properly: Before further flight, apply corrosion inhibitor to the sliders, in accordance with the applicable

AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

(2) If any slider does not lock properly: Before further flight, repair the slider or replace it with a new part, and apply corrosion inhibitor to the sliders; in accordance with the applicable AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A330–52A3063, Revision 01, dated January 3, 2001; or Airbus All Operators Telex A340–52A4075, Revision 01, dated January 3, 2001; 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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–053(B) and 2001–052(B), both dated February 7, 2001.

Effective Date

(e) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 31, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2929 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–332–AD; Amendment 39–12636; AD 2002–02–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –500 series airplanes, that requires replacement of the bolt and self-locking nut on the primary support pin of the main landing gear (MLG) support beam with a new bolt, castellated nut, washer, and cotter pin. This action is necessary to prevent the loosening and loss of the support pin retaining bolt on the MLG, which could result in the loosening and movement of the support pin and consequent cracked support fittings and collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Blilie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, and –500 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38587). That action proposed to require replacement of the bolt and self-locking nut on the primary support pin of the main landing gear (MLG) support beam with a new bolt, castellated nut, washer, and cotter pin.

Comments

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

Refer to New Service Information

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to refer to Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001, as the acceptable source of service information for the proposed actions. (The proposed AD refers to the original issue of the service bulletin, dated June 15, 2000, and Revision 1 of the service bulletin, dated October 12, 2000, as appropriate sources of service information for the proposed actions.)

The FAA concurs. Since the issuance of the proposed AD, we have reviewed and approved Revision 2 of the service bulletin. This revision provides significant detailed information on which airplanes need the work described in the service bulletin and which do not. For example, the actions in Boeing Service Bulletin 737–57A1260, Revision 2, do not apply to airplanes in Groups 3 and 4, as listed in the service bulletin, if the airplane has been modified per Boeing Service Bulletin 737–57–1172, dated October 15, 1987; OR Boeing Service Bulletin 737–57–1216, dated December 17, 1992, Revision 1, dated September 23, 1993, or Revision 2, dated May 6, 1999 (but not both of those service bulletins). Revision 2 of the service bulletin also provides instructions for certain airplanes in alternative configurations. Because these changes are relieving in nature, we find that it is appropriate to revise paragraph (a), as well as the applicability statement, of this final rule to refer to Revision 2 of the service bulletin. We have also added a new Note 2 to this AD (and reordered a subsequent note accordingly) to state that accomplishment of the actions before the effective date of this AD per the original issue or Revision 1 of Boeing Service Bulletin 737–57A1260 is acceptable for compliance with paragraph (a) of this AD.

Another commenter reports that, when it tried to do Boeing Service Bulletin 737–57A1260 on an affected airplane, it found that the bolt sizes identified in that service bulletin did

not match parts included with the associated kit. The commenter asks how Boeing will revise the service bulletin. We infer that the commenter attempted to accomplish the original issue or Revision 1 of the service bulletin, and we also infer that the commenter's airplane is one of the airplanes of alternative configuration which are acknowledged in Revision 2 of the service bulletin. We note that revising the final rule as described previously will positively address the commenter's concern, and no further change to the final rule is needed in this regard.

A third commenter requests that we revise the proposed AD to refer to Boeing Alert Service Bulletin 737–57A1260, Information Notice (IN) 02. The commenter notes that this IN contains information about alternative configurations and methods related to the installation of the castellated nut and cotter pin. We note that the data in the IN to which the commenter refers have been incorporated into Boeing Service Bulletin 737–57A1260, Revision 2; thus, no further change to the final rule is needed.

Acknowledge Other Configurations

One commenter requests that we revise the proposed AD to state that accomplishment of Boeing Service Bulletin 737–57–1172 or 737–57–1216 is equivalent to the accomplishment of the original issue or Revision 1 of Boeing Alert Service Bulletin 737–57A1260. Along with its comment, the commenter includes a copy of a telex from the airplane manufacturer which indicates that a castellated nut with a cotter pin through the bolt shank meets the intent of Boeing Service Bulletin 737–57A1260.

We concur with the intent of the commenter's request. Airplanes in certain configurations, as defined under paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–57A1260, Revision 2, are not subject to the requirements of this AD. Therefore, we have added a new paragraph (b) to this AD (and reordered subsequent paragraphs accordingly) to clarify that airplanes in the configurations specified in Revision 2 are not subject to this AD. In addition, for clarification, we have revised paragraph (a) of this AD to specify that the existing parts to be replaced are a RETAINING bolt, a SELF-LOCKING nut, and associated hardware.

Refer to Related Service Bulletin

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to explicitly caution operators that accomplishment of the actions in Boeing Service Bulletin 737–57–1216 may result in installation of self-locking nuts that are the subject of this AD. The commenter asserts that the sequencing of Boeing Service Bulletins 737–57–1216 and 737–57A1260 is critical. The commenter points out that the relationship between these service bulletins is noted in Boeing Service Bulletin 737–57–1216, Revision 2, IN 04, dated October 12, 2000. (That IN informs operators of certain airplanes that, if they do Boeing Service Bulletin 737–57–1216, they may be subject to Boeing Service Bulletin 737–57A1260.)

We concur with the commenter's request. While operators are responsible for installing only approved parts, we acknowledge that it may be helpful to advise operators of a related service bulletin that may conflict with the actions in this AD. We have added Note 1 to this final rule accordingly.

Limit Applicability

One commenter states that, if the unsafe condition exists only in ''a batch of Kaynar nuts,'' as stated in the referenced service bulletin, then the applicability of the proposed AD should be limited to airplanes built in the time period when that batch of nuts was used.

The FAA infers that the commenter is requesting that the applicability of this AD be limited. We note that the revision of the applicability to refer to Revision 2 of the service bulletin, as described previously, may address the commenter's concern, and we do not concur that any further change to this final rule needs to be made. The airplanes listed in the Effectivity section of the referenced service bulletin are those that the airplane manufacturer cannot be certain do not have affected nuts installed. While only certain airplanes included in the applicability of this AD will have discrepant nuts installed, neither we nor the airplane manufacturer are able to narrow the list of potentially affected airplanes any further than it has already been narrowed by Boeing Service Bulletin 737–57A1260, Revision 2.

Extend Compliance Time

Several commenters request that the FAA extend the compliance time for the proposed replacement. One commenter suggests only extension of the compliance time from the earlier of 12 months or 1,500 flight cycles after the effective date of the AD, to the earlier of 24 months or 4,000 flight cycles after the effective date of the AD. Three other commenters suggest adding new repetitive inspections for discrepancies of the nut and bolt at the proposed compliance time of the earlier of 12 months or 1,500 flight cycles after the effective date of the AD, and requiring the proposed replacement at the earlier of 24 months or 4,500 flight cycles after the effective date of the AD. Most of the commenters state that such an extension would ease scheduling difficulties by allowing affected operators to accomplish the proposed replacement at a scheduled maintenance visit.

We do not concur with the commenters' requests. The commenters provide no technical justification to show that extension of the compliance time would provide an acceptable level of safety. While the compliance time for the replacement required by this AD is based on the manufacturer's recommendation in its service bulletin, the FAA also considered the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet in developing an appropriate compliance time for this action. In light of all of these factors, the FAA finds a compliance time of 12 months or 1,500 flight cycles after the effective date of this AD, whichever is earlier, for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the final rule is needed in this regard.

Conclusion

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

Cost Impact

There are approximately 2,300 Model 737–200, -200C, -300, and -500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 980 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $39 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $391,020, or $399 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:

2002–02–08 Boeing: Amendment 39–12636. Docket 2000–NM–332–AD.

Applicability: Model 737–200, –200C, –300, and –500 series airplanes; as identified in Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001; certificated in any category.

Note 1: Operators should note that, if self-locking nuts are installed on the support beam for the main landing gear (MLG) during accomplishment of Boeing Service Bulletin 737–57–1216, dated December 17, 1992; Revision 1, dated September 23, 1993; or Revision 2, dated May 6, 1999; the airplane may be subject to the requirements of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loosening and loss of the support pin retaining bolt on the MLG, which could result in the loosening and movement of the support pin, consequent cracked support fittings, and collapse of the MLG, accomplish the following:

Replacement

(a) Within 12 months from the effective date of this AD, or within 1,500 flight cycles from the effective date of this AD, whichever occurs first, replace the retaining bolt, self-locking nut, and associated hardware of the support beam for the MLG with a new bolt, castellated nut, and new hardware, per the Accomplishment Instructions of Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001.

Note 3: Replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–57A1260, dated June 15, 2000; or Revision 1, dated October 12, 2000; are acceptable for compliance with paragraph (a) of this AD.

Airplanes in Other Configurations

(b) As shown under paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001, if the airplane is in a configuration in which a drilled shank bolt, castellated nut, and cotter pin are installed in the subject areas of the support beam for the MLG, no action is necessary per this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 31, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2928 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–392–AD; Amendment 39–12634; AD 2002–02–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330–243, –341, –342, and –343 series airplanes. This action requires modifying the rear engine mount by replacing the existing fail-safe link with a new, improved fail-safe link. This action is necessary to prevent failure of the fail-safe link of the rear engine

mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–392–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–243, –341, –342, and –343 series airplanes, which are equipped with Rolls-Royce engines. The DGAC advises that fatigue tests have revealed that the fail-safe link of the rear engine mount may not have adequate fatigue strength. The fail-safe link is intended to withstand operational loads in the event of loss of the primary load path for the engine. Failure of the fail-safe link of the rear engine mount, when combined with loss of the primary load path for the engine, could result in separation of the engine from the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–71–3010, dated September 25, 1999, which describes procedures for modifying the rear engine mount on the left- and right-hand sides of the airplane by replacing the existing fail-safe link with a new, improved fail-safe link. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–544(B), dated November 14, 2001, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A330–71–3010 refers to Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, as an additional source of service information for modification of the rear engine mount. The modification includes replacing the two-piece bearing with a one-piece bearing and increasing the thickness of the fail-safe link.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent failure of the fail-safe link of the rear engine mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane. This AD requires accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 40 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be provided by the engine manufacturer at no charge to the operators. Based on these figures, the cost impact of this AD would be $2,400 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–392–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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

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:

2002–02–06 Airbus Industrie: Amendment 39–12634. Docket 2001–NM–392–AD.

Applicability: Model A330–243, –341, –342, and –343 series airplanes; certificated in any category; except those on which Airbus Modification 46877 (Airbus Service Bulletin A330–71–3010, dated September 25, 1999) or Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fail-safe link of the rear engine mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane, accomplish the following:

Replacement

(a) Before accumulating 8,000 total flight cycles on the fail-safe link of the rear engine mount, or within 30 days after the effective date of this AD, whichever is later: Modify the rear engine mount on the left- and right-hand sides of the airplane by replacing the existing fail-safe link, part number FK11282, with a new, improved fail-safe link, according to Airbus Service Bulletin A330–71–3010, dated September 25, 1999.

Note 2: Airbus Service Bulletin A330–71–3010 refers to Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, as an additional source of service information for modification of the rear engine mount. The modification includes replacing the two-piece bearing with a one-piece bearing and increasing the thickness of the fail-safe link.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–71–3010, dated September 25, 1999. 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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–544(B), dated November 14, 2001.

Effective Date

(e) This amendment becomes effective on February 27, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2927 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–253–AD; Amendment 39–12633; AD 2002–02–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, 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; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. This AD requires repetitive overhaul, including associated modifications, of the ram air turbine (RAT). This action is necessary to prevent failure of the RAT to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: 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; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; was published in the **Federal Register** on November 19, 2001 (66 FR 57900). That action proposed to require repetitive overhaul, including associated modifications, of the ram air turbine (RAT).

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 153 Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 series airplanes; of U.S. registry will be affected by this AD. It will take approximately 4 work hours per airplane to remove and replace the RAT, at an average labor rate of $60 per work hour. Incorporation of the various modifications that will be required to complete the required overhaul at the overhaul facility will cost an average of approximately $67,500 per airplane, based on vendor-supplied information. Based on these figures, the average cost impact of the requirements of this AD on U.S. operators is estimated to be $67,740 per airplane, per overhaul.

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:

2002–02–05 Airbus Industrie: Amendment 39–12633. Docket 2001–NM–253–AD.

Applicability: Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 series airplanes; certificated in any category; equipped with Dowty or Hamilton Sundstrand ram air turbines (RATs).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane, accomplish the following:

Overhaul

(a) Prior to the accumulation of 20 years since the date of manufacture of the airplane, or within 2 years after the date of this AD, whichever occurs later: Overhaul the RAT in accordance with Airbus Service Bulletin A300–29–0118, dated April 20, 2001 (for Model A300 B2 and A300 B4 series airplanes); A300–29–6049, Revision 02, dated September 10, 2001 (for Model A300–600 series airplanes); or A310–29–2087, dated April 20, 2001 (for Model A310 series airplanes); as applicable. Thereafter, repeat the overhaul at least every 20 years, in

accordance with the applicable service bulletin.

Note 2: Accomplishment prior to the effective date of this AD of the overhaul in accordance with Airbus Service Bulletin A300–29–6049, dated April 20, 2001, or Revision 01, dated July 23, 2001, is acceptable for compliance with the initial overhaul requirement of paragraph (a) of this AD.

Note 3: The service bulletins identified in paragraph (a) of this AD refer to Hamilton Sundstrand Service Bulletins 730816–29–12, ERPS26T–29–4, and 732365–29–4 as additional sources of service information for the overhaul actions.

Concurrent Modification Requirements

(b) Prior to or concurrently with the overhaul required by paragraph (a) of this AD, perform the applicable modifications specified in the following table:

TABLE 1.—CONCURRENT MODIFICATIONS

For model—	Modify the airplane by—	In accordance with—	Which refers to the following additional source of service information:
(1) A300 series airplanes.	(i) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A300–29–0106, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(ii) Replacing the RAT with a modified RAT.	Airbus Service Bulletin A300–29–0115, Revision 01, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(2) A300–600 series airplanes.	(i) Replacing the RAT blade release cable and sheath and modifying the RAT identification plate.	Airbus Service Bulletin A300–29–6004, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987.	Hamilton Sundstrand Service Bulletin 732365–29–1.
	(ii) Modifying the RAT	Airbus Service Bulletin A300–29–6005, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 732365–29–2.
	(iii) Installing a grease nipple andn a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A300–29–6039, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(iv) Replacing the RAT with a modified RAT.	Airbus Service A300–29–6046, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(3) A310 series airplanes.	(i) Reidentifying RATs and RAT assemblies thatare in good condition, performing functional tests, and reidentifying certain RATs.	Airbus Service A310–29–2003, dated January 20, 1984.	[reserved]
	(ii) Replacing the blade release cablel and sheath and modifying the RAT identification plate.	Airbus Service A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987.	Hamilton Sundstrand Service Bulletin 730816–29–9.
	(iii) Modifying the RAT	Airbus Service Bulletin A310–29–2011, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 730816–29–10.
	(iv) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A310–29–2078, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(v) Modifying the RAT	Airbus Service Bulletin A310–29–2084, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.

Note 4: The following Airbus service bulletins are also acceptable for compliance with the applicable requirements of paragraph (b) of this AD:

A300–29–0106, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–0115, dated September 14, 1998.

A300–29–6003, dated January 31, 1985.

A300–29–6005, dated June 21, 1985.

A300–29–6039, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–6046, dated September 14, 1998; and Revision 01, dated December 16, 1998.

A310–29–2011, dated June 21, 1985.

A310–29–2078, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A310–29–2084, dated September 14, 1998; and Revision 01, dated December 16, 1998.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–29–0106, Revision 04, dated March 22, 2001; Airbus Service Bulletin A300–29–0115, Revision 01, dated June 28, 2000; Airbus Service Bulletin A300–29–0118, dated April 20, 2001; Airbus Service Bulletin A300–29–6003, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987; Airbus Service Bulletin A300–29–6005, Revision 1, dated September 2, 1986; Airbus Service Bulletin A300–29–6039, Revision 04, dated March 22, 2001; Airbus Service Bulletin A300–29–6046, Revision 02, dated June 28, 2000; Airbus Service Bulletin A300–29–6049, Revision 02, dated September 10, 2001; Airbus Service Bulletin A310–29–2003, dated January 20, 1984; Airbus Service Bulletin A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987; Airbus Service Bulletin A310–29–2011, Revision 1, dated September 2, 1986; Airbus Service Bulletin A310–29–2078, Revision 04, dated March 22, 2001; Airbus Service Bulletin A310–29–2084, Revision 02, dated June 28, 2000; and Airbus Service Bulletin A310–29–2087, dated April 20, 2001; as applicable. Revision 1 of Airbus Service Bulletin A300–29–6005 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	1	Sept. 2, 1986.
3	Original ..	June 21, 1985.

Revision 1 of Airbus Service Bulletin A310–29–2011 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	1	Sept. 2, 1986.
3, 4	Original ..	June 21, 1985.

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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 2001–212(B), dated May 30, 2001.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2926 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–07–AD; Amendment 39–12632; AD 2002–02–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires a one-time inspection of a wire bundle in the left wing front spar for chafing and for proper installation of a Teflon sleeve; corrective action, if necessary; and installation of extra protection against chafing. This action is necessary to prevent chafing between the wire bundle and the left wing front spar, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44323). That action proposed to require a one-time inspection of a wire bundle in the left wing front spar for chafing and for proper installation of a Teflon sleeve; corrective action, if necessary; and installation of extra protection against chafing.

Comments

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

Give Credit for Accomplishment of Related Service Letters

One commenter requests that the FAA revise the proposed AD to give credit to operators who have accomplished the actions specified in the proposed AD in accordance with service information other than that identified in the proposed AD. The commenter notes that Boeing Service Letters 757–SL–29–024–B, dated November 3, 1995, and 757–SL–29–024–C, dated June 13, 2000, also address the unsafe condition identified in the proposed AD. The commenter further states that it has inspected its affected airplanes in accordance with Boeing Service Letter 757–SL–29–024–C.

The FAA concurs with the commenter's request. We find that the procedures in the service letters referenced by the commenter are nearly identical to those in Boeing Service Bulletins 757–29–0058 and 757–29–0059, both dated November 9, 2000, which the proposed AD identifies as appropriate sources of service information. Therefore, we have added a new Note 2, and renumbered subsequent notes from the proposed AD accordingly, to give credit for actions accomplished before the effective date of this AD in accordance with Boeing Service Letter 757–SL–29–024–B or 757–SL–29–024–C.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither

increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,058 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 615 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $36,900, or $60 per airplane.

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

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:

2002–02–04 Boeing: Amendment 39–12632. Docket 2001–NM–07–AD.

Applicability: Model 757 series airplanes, certificated in any category, as listed in Boeing Service Bulletins 757–29–0058 and 757–29–0059, both dated November 9, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing between the wire bundle and the left wing front spar, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire, accomplish the following:

Compliance Time

(a) Within 6 months from the effective date of this AD, perform the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Boeing Service Bulletin 757–29–0058, dated November 9, 2000 (for Model 757–200 series airplanes); or Boeing Service Bulletin 757–29–0059, also dated November 9, 2000 (for Model 757–300 series airplanes); as applicable.

Note 2: Inspections, repairs, and installations accomplished before the effective date of this AD in accordance with Boeing Service Letter 757–SL–29–024–B, dated November 3, 1995, or 757–SL–29–024–C, dated June 13, 2000, are acceptable for compliance with the applicable action specified in this AD.

Inspection and Corrective Action

(1) Perform a detailed visual inspection of the wire bundle, part number (P/N) W5100, adjacent to front spar station 318.99 in the left wing leading edge, to detect chafing. If any damage is found, before further flight, repair the wire bundle.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification

(2) Install a caterpillar grommet to the edge of the spar lower chord in the left wing leading edge.

Inspection and Corrective Action

(3) Perform a general visual inspection for proper installation of perforated Teflon sleeving on the wire bundle, P/N W5100. If sleeving does not exist or is not covering the area from 1.0 inch beyond the clamp point to 3.0 inches below the spar flange edge, before further flight, install or repair the Teflon sleeving.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, 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.''

Note 5: An optional 0.5-inch spacer may be used in accordance with the applicable service bulletin above, Section 3, Accomplishment Instructions, Work Instructions, to prevent the wire bundle from contacting the lower chord of the front spar on the left wing.

Reporting

(b) If the Teflon sleeving is found missing or improperly installed during the inspection required in paragraph (a)(3) of this AD, submit a report of inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days

after performing the inspection required by paragraph (a)(3) of this AD.

(2) For airplanes on which the inspection specified in paragraph (a)(3) has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 757–29–0058, dated November 9, 2000; or Boeing Service Bulletin 757–29–0059, dated November 9, 2000; 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2925 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–242–AD; Amendment 39–12646; AD 2002–03–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires, among other things, repetitive leak tests of the lavatory drain systems and repair, if necessary; installation of a lever lock cap, vacuum breaker check valve, or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of ''donut'' type waste drain valves installed in the waste drain system. This amendment is prompted by continuing reports of damage to engines, airframes, and property on the ground, caused by ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this AD are intended to prevent such damage associated with the problems of ''blue ice.''

DATES: Effective March 19, 2002.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

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 McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on July 9, 1998 (63 FR 37074). That action proposed to require among other things, repetitive leak tests of the lavatory drain systems and repair, if necessary; installation of a lever lock cap, vacuum breaker check valve, or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of ''donut'' type waste drain valves installed in the waste drain system.

Comments Received

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

Support for the Proposed Rule

One commenter agrees with the proposal.

Request To Use a Leak Check Tool

One commenter requests that the FAA revise paragraph (a) of the proposed rule to specify that it is not necessary to pressurize the aircraft to verify the integrity of service panel drain valves if the maintenance personnel perform a leak test. The commenter states that such a revision would be consistent with other ADs. The commenter also notes that such testing of the inner seal with air in a leak test is much more stringent than testing with a liquid, as it is obviously much easier for air to leak than the lavatory fluid. The commenter also requests that the FAA revise the duration of the leak test from five minutes to one minute when testing the inner seals of service panel valves with a leak check tool that applies a vacuum from the downstream side of the valve.

The FAA does not agree that paragraph (a) of this AD should be revised for the reasons the commenter states. We note that the Shaw Aero vacuum test tool has been approved to allow testing without requiring fluid upstream of the valve. However, if specific procedures were provided for using a leak test too, the FAA would consider a request for an alternative method of compliance in accordance with paragraph (d) of this AD. Since the commenter did not submit data that would justify a shorter interval for the vacuum test tool, we have no basis to reduce the duration of the leak test. No change is necessary to the final rule in this regard.

Request To Revise the Interval for Changing the Valve Seals

One commenter requests that the interval for changing the Pneudraulics valve seals specified in paragraph (a) of the proposed rule be reduced from every

6,000 flight hours to every 5,000 flight hours. The commenter states that the design limitations, and the potential for ice, hardened debris, and ''black tar'' build-up on the ball at the service panel seals are much more susceptible to damage. Additionally, the commenter notes that the location of the service panel (Pneudraulics valve) relative to the in-line ball valve makes those seals or mating surfaces more susceptible to damage by service and maintenance personnel.

The FAA does not agree with the commenter's request. The 6,000-flight hour interval for changing the Pneudraulics valve seals is based on extensive operating experience. Further, we have received no adverse reports on the Pneudraulics valve seals describing those problems that were indicated by the commenter. No change to the final rule is necessary in this regard.

Request To Extend the Leak Check Intervals for Certain Valves

One commenter requests that the leak test interval for Shaw Aero valves listed in Table 1 of the proposed AD be extended from every 1,000 flight hours to every 2,000 flight hours. The commenter argues that the in-service history of the Shaw Aero devices demonstrates a reliability factor that justifies such an extension.

The FAA agrees with the commenter's request, and has previously provided a similar interval extension for those valves on other ''blue ice'' related ADs. We have revised Table 1 of the final rule to reflect extension of the leak check interval to every 2,000 flight hours for those valves. Since the valves specified in Table 1 are now approved for an interval of 2,000 flight hours, we have removed Table 1 from paragraph (a)(4) of the NPRM that specifies approval for an interval of 1,000 flight hours, and have inserted Table 1 into paragraph (a)(3) of the final rule that specifies approval for valves with an interval of 2,000 flight hours.

Request To Correct Certain Part Numbers (P/Ns)

One commenter requests that certain P/Ns listed in Table 1 of the proposed AD be corrected. The FAA concurs and has revised Table 1 of the final rule.

Request To Revise Economic Estimate

This same commenter requests that the FAA add the cost of performing a leak check with the vacuum pump test tool. The commenter states that operators should be made aware that the vacuum pump test tool is more economical than pressurizing the airplane to obtain the required 3-pounds-per-square-32inch (psi) differential pressure.

The FAA does not agree that the estimated costs should be revised for the reasons the commenter states. As stated above, operators may request an alternative method of compliance for using the vacuum pump test tool by providing us with specific procedures for performing the leak test. Even though using the vacuum pump test tool may be less costly and may reduce the time required to perform the leak test, no dollar values were provided to us for comparison. No change is necessary to the final rule in this regard.

Conclusion

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

Cost Impact

There are approximately 306 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 229 airplanes of U.S. registry and 26 U.S. operators will be affected by this AD.

The required waste drain system leak test and outer cap inspections will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the waste drain system leak test and outer cap inspection is estimated to be $82,440, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have ''donut'' type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations will be required to be leak tested as few as 3 times each year. Based on these figures, the cost impact of this requirement is estimated to be between $1,080 and $5,400 per airplane, per year.

With regard to replacement of ''donut'' type drain valves, the cost of a new valve is approximately $1,200. However, the number of leakage tests for an airplane that flies an average of 3,000 flight hours a year is reduced from 15 tests to 3 tests, which essentially pays for the cost of the replacement valve, so that no additional net cost is incurred because of this change.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor rate of $60 per work hour. As with leak tests, certain airplanes will be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the cost impact of the required repetitive visual inspections is estimated to be between $180 and $900 per airplane, per year.

The required installation of the flush/fill line cap will take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be $275 per cap. There is an average of 2.5 caps per airplane. Based on these figures, the cost impact of these requirements on U.S. operators is estimated to be $171,178, or $748 per airplane.

The seal replacements of the drain valves required by paragraph (a) of this AD will take approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts will be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these requirements is estimated to be $73,280, or $320 per airplane, per replacement.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions required in this AD were to be conducted as ''stand alone'' actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because ADs require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest

of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–03–05 McDonnell Douglas: Amendment 39–12646. Docket 97–NM–242–AD.

Applicability: Model DC–8 series airplanes equipped with a lavatory drainage system; certificated in any category.

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

Compliance: Required as indicated, unless previously accomplished.

To prevent engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of ''blue ice'' that has formed from leakage of the lavatory drain system or flush/fill system and dislodged from the airplane, accomplish the following:

(a) Accomplish the applicable requirements of paragraphs (a)(1) through (a)(9) of this AD at the time specified in each paragraph. For the waste drain system of any lavatory that incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. During the performance of the waste drain system valve leak tests specified in this AD, fluid shall completely cover the upstream end of the valve being tested. The direction of the 3-pounds per square inch differential pressure (PSID) shall be applied in the same direction as occurs in flight; the other waste drain system valves shall be open, and the minimum time to maintain the differential pressure shall be 5 minutes. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Inclusion of a valve in this AD does not mean that the valve has been certified for installation in DC–8 series airplanes. Certification of the valve for installation in the airplane must be accomplished by means acceptable to the FAA, if the valve has not been previously certified.

(1) Replace the valve seals with new valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision P/N series 2651–278 or 2651–357: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a Pneudraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision P/N series 2651–278: Within 4,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 4,500 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring-loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection to detect wear or damage that may allow leakage of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces.

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, 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.''

(3) For each lavatory drain system that has any of the following service panel drain valves installed: Pneudraulics P/N series 9527, Kaiser Electroprecision P/N 2651–357, or the Shaw Aero P/N's listed in Table 1 of this paragraph: Within 2,000 flight hours

after the effective date of this AD, and thereafter at intervals not to exceed 2,000 flight hours, accomplish the procedures specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Table 1 is as follows:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 2,000 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part number	Serial numbers approved for 2,000-hour leak test interval
A. 331 Series and 332 Series	All.
B. 10101000B–A–1	201 and higher.
C. 10101000BA2	0130 and higher.
D. Certain 10101000B valves	Any of these ''B'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked ''SBB38–1–58''.
E. 10101000C–A–1	0277 and higher.
F. 10101000CN OR C–N	3649 and higher.
G. Certain 10101000C valves	Any of these ''C'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000C–38–2 dated October 7, 1994, and are marked ''SBC38–2–58''.
H. 10101000C–R	191 and higher (747–400).
I. 10101000C–G	Superseded by 10101000C–R (747–400).

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision P/N series 0218–0032: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (a)(4)(i) and (a)(4)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision P/N series 0218–0026; or Shaw Aero Devices P/N series 10101000B or 10101000C (except as specified in paragraph (a)(3) of this AD): Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the procedures specified in paragraphs (a)(5)(i) and (a)(5)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(6) For each lavatory drain system with a lavatory drain system valve that incorporates either ''donut'' plug, Kaiser Electroprecision P/Ns 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange P/Ns 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; Shaw Aero Devices assembly P/N 0008–100; or other FAA-approved equivalent parts; accomplish the requirements of paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this AD at the times specified in those paragraphs. For the purposes of this paragraph ((a)(6)), ''FAA-approved equivalent part'' means either a ''donut'' plug which mates with the cap/flange P/Ns listed above, or a cap/flange which mates with the ''donut'' plug P/Ns listed above, such that the cap/flange and ''donut'' plug are used together as an assembled valve.

(i) Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(6)(i) of this AD.

(iii) Within 5,000 flight hours after the effective date of this AD, replace all the ''donut'' valves identified in paragraph (a)(6) of this AD with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(7) For each lavatory drain system not addressed in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the procedures specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(8) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (a)(8)(i) or (a)(8)(ii) of this AD, as applicable; and paragraph (a)(8)(iii) of this AD. Thereafter, repeat these requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve, in accordance with the applicable portions of paragraph (a)(8)(ii)(A) of this AD.

(ii) If a vacuum breaker check valve, Monogram P/N series 3765–190, or Shaw Aero Devices P/N series 301–0009–01 is

installed on the subject lavatory, replace the seals/O-rings in the valve. Perform a leak test of the vacuum breaker check valve and verify proper operation of the vent line vacuum breaker, in accordance with paragraphs (a)(8)(ii)(A) and (a)(8)(ii)(B) of this AD.

(A) Leak test the toilet tank anti-siphon (check) valve or the vacuum breaker check valve by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl). Apply 3 PSID across the valve in the same direction as occurs in flight. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Check for leakage at the flush/fill line port for a period of 5 minutes.

(B) Verify proper operation of the vent line vacuum breaker by filling the tank and checking at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. If back drainage does not occur, replace the vent line vacuum breaker or repair the vacuum breaker check valve, in accordance with the component maintenance manual, to obtain proper back drainage. As an alternative to the test technique specified above, verify proper operation of the vent line vacuum breaker in accordance with the procedures of the applicable component maintenance manual.

(iii) If a flush/fill ball valve, Kaiser Electroprecision P/N series 0062–0009, is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(8)(ii)(A) of this AD.

(9) If leakage is discovered during any leak test or inspection required by paragraph (a) of this AD, or if evidence of leakage is found at any other time, accomplish the requirements of paragraph (a)(9)(i), (a)(9)(ii), or (a)(9)(iii) of this AD, as applicable.

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the appropriate leak test as specified in paragraph (a) of this AD, as applicable. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 4: For purposes of this AD, ''leakage'' is defined as any visible leakage, if observed during a leak test. At any other time (than during a leak test), ''leakage'' is defined as the presence of ice in the service panel, or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(9)(i) or (a)(9)(ii) of this AD: Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) For all airplanes: Unless accomplished previously, within 5,000 flight hours after the effective date of this AD, perform the actions specified in either paragraph (b)(1), (b)(2), or (b)(3) of this AD:

(1) Install an FAA-approved lever lock cap on the flush/fill lines for all lavatories. Or

(2) Install a vacuum break, Monogram P/N series 3765–190, or Shaw Aero Devices P/N series 301–0009–01, in the flush/fill lines for all lavatories. Or

(3) Install a flush/fill ball valve, Kaiser Electroprecision P/N series 0062–0009, on the flush/fill lines for all lavatories.

(c) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed in accordance with the new operator's schedule, in accordance with paragraph (a) of this AD.

(1) For airplanes that have been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever results in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA Principal Maintenance Inspector (PMI), but within a period not to exceed 200 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on February 5, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3311 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–39–AD; Amendment 39–12639; AD 2002–02–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect certain oleo attachment brackets for cracks and replace any cracked bracket found during any inspection. In working with the United Kingdom, we have determined that the bracket may, as an option, be replaced with a newly designed steel bracket, increasing the length of time between the repetitive inspections. The actions specified by this AD are intended to detect and correct cracked oleo attachment brackets. Such a condition could cause the attachment bracket to fail, which could result in detachment of the main landing gear.

DATES: This AD becomes effective on March 25, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 25, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the

Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified FAA that an unsafe condition may exist on all BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. The United Kingdom CAA reports five occurrences of failure of the oleo attachment bracket, part number (P/N) NB–40–0075. This bracket is the main attachment point for the main landing gear. The CAA determined that the cause for failure of these brackets is the current design of P/N NB–40–0075.

What Is the Potential Impact If FAA Took No Action?

Cracked oleo attachment brackets, if not detected and corrected, could fail and detach from the main landing gear.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 23, 2001 (66 FR 58687). The NPRM proposed to require you to repetitively inspect the oleo attachment brackets, P/N NB–40–0075, for cracks and replace any cracked bracket found during any inspection. Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with B–N Service Bulletin Number 273, Issue 2, dated January 12, 2000.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Oleo Attachment Brackets?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures.

The manufacturer has changed the design of the oleo attachment bracket, P/N NB–40–0075, which is made of aluminum alloy. The newly designed oleo attachment bracket, P/N NB–40–0479, is made of steel. This design reduces the number of repetitive inspections. The newly designed part has been introduced in Issue 3 of B–N Service Bulletin Number SB 273.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

We did receive Issue 3 of B–N Service Bulletin Number SB 273. This service bulletin introduces the new design oleo attachment bracket described above. We have determined that the option to install this new design bracket should be incorporated into the AD. This installation will increase the time between repetitive inspection intervals (reduce the number of inspections).

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 126 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	No cost for parts	$180	$180 × 126 = $22,680

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$370	$720 + $370 = $1,090

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–02–11 Pilatus Britten-Norman LTD.: Amendment 39–12639; Docket No. 2001–CE–39–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all constructor numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked oleo attachment brackets. Such a condition could cause the attachment bracket to fail, which could result in detachment of the main landing gear.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, visually or using 10x magnifying glass, the oleo attachment brackets, part number (P/N) NB–40–0075, for cracks.	Within the next 25 hours time-in-service (TIS) or 50 landings, whichever occurs first, after March 25, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 500 hours TIS or 1200 landings, whichever occurs first.	In accordance with B–N Service Bulletin Number SB 273, Issue 3 dated December 5, 2001, and the applicable maintenance manual.
(2) Inspect visually or using 10x magnifying glass, the oleo attachment brackets, P/N NB–40–0479, for cracks.	Within the next 4 years after the date of installation or the next time the main landing gear is removed, whichever occurs first, after March 25, 2002 (the effective date of this AD), and repetitively inspect thereafter every time the main landing gear is removed or at intervals not to exceed 4 years, whichever occurs first.	In accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001, and the applicable maintenance manual.
(3) If cracks are found during any inspection required in paragraph (d)(1) or (d)(2) of this AD, replace the cracked oleo attachment bracket with another oleo attachment bracket, P/N NB–40–0075 or P/N NB–40–0479.	Prior to further fight after the inspection(s) required in paragraph (d)(1) and (d)(2) of this AD in which the crack is found. Repetitively inspect at the repetitive inspection intervals specified in paragraph (d)(1) or (d)(2) of this AD, whichever is applicable.	In accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001, and the applicable maintenance manual.
(4) Do not install any oleo attachment bracket, P/N NB–40–0075 or NB–40–0479 (or FAA-approved equivalent part number), unless it has been inspected as required in paragraph (d)(1) and (d)(2) of this AD and determined to be airworthy.	As of March 25, 2002 (the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in United Kingdom CAA AD 005–09–2000, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on March 25, 2002.

Issued in Kansas City, Missouri, on February 1, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2945 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–38–AD; Amendment 39–12638; AD 2002–02–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This AD requires you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks and replace any suspect bracket. This AD also requires you to replace the hinge bracket at a certain time period if no discrepancies are found. This replacement includes modifying this area and installing modified brackets. This replacement allows you to increase the time period between inspections (reduce the number of repetitive inspections). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

DATES: This AD becomes effective on March 25, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 25, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The United Kingdom CAA reports several instances where the inboard brackets of the elevator outboard hinge had loose rivets, structural damage, or cracks.

These inboard brackets of the elevator outboard hinge incorporate part number NB–31–0077.

What Is the Potential Impact if FAA Took No Action?

Loose rivets, structural damage, or cracks in the inboard brackets of the elevator outboard hinge, if not detected and corrected, could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 28, 2001 (66 FR 59378). The NPRM proposed to require you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; and replace the hinge bracket prior to further flight or at a certain time, depending on whether loose rivets, structural damage, or cracks are found during an inspection. This replacement includes modifying this area and installing modified brackets, part number NB–31–0901.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

Do not add any additional burden upon the public than was already proposed in the NPRM.

Are There Differences Between This AD, the Service Information, and the CAA AD?

This AD requires you to replace/modify the hinge bracket at a certain time period if no discrepancies are found to increase the time period between inspections (reduce the number of repetitive inspections). BN Bulletin Number BN2/SB 259 and CAA AD Number 002–07–2000 do not specify this provision; they both specify this replacement/modification only if a suspect bracket is found during an inspection. This provision of incorporating the replacement/modification regardless of whether a suspect bracket is found is consistent with FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to incorporating this replacement/modification would be to repetitively inspect this area every 100 hours time-in-service (TIS) for the life of the airplane instead of every 1,000 hours TIS.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 118 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour at $60 per hour = $60	No parts necessary to accomplish the inspection.	$60 per airplane	$7,080

We estimate the following costs to accomplish the replacement/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours at $60 per hour = $600	$240 per airplane	$840 per airplane	$99,120

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–02–10 Pilatus Britten Norman Ltd.: Amendment 39–12638; Docket No. 2001–CE–38–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes, all constructor numbers, that are certificated in any category and do not have one of the following incorporated:

(1) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour time-in-service (TIS) interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or

(2) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For airplanes that do not have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 installed in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901; and (iii) Comply with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	Initially inspect within the next 100 hours time-in-service (TIS) after March 25, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 100 hours TIS until the replacement/modification required by paragraph (d)(1)(ii) of this AD is accomplished. Do the replacement initially at whichever of the following occurs within 1,000 hours TIS after March 25, 2002 (the effective date of this AD) or prior to further flight when any loose of rivet, structural damage, or crack is found. Replace thereafter prior to further bulletin), flight after any loose rivet, structural accomplish the damage, or crack is found.	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.

Actions	Compliance	Procedures
(2) For airplanes that have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; and (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901.	Inspect within 1,000 hours TIS after incorporating the replacement/modification or within the 100 hours TIS after March 25, 2002 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS. Accomplish the replacement/modification prior to further flight when any loose rivet, structural damage, or crack is found during any inspection required by this AD.	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.
(3) This AD does not apply to airplanes with one of the following incorporated: (i) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour TIS interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or (ii) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes.	Not Applicable.	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in CAA AD Number 002–07–2000, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on March 25, 2002.

Issued in Kansas City, Missouri, on February 1, 2002.

Michael Gallagher,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2946 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–413–AD; Amendment 39–12652; AD 2002–03–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, repair, if necessary, and, for certain airplanes, prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of its attachment to the skin. This amendment adds repetitive ultrasonic inspections of the subject area, and repair, if necessary. It also adds installation of fasteners to reinforce the bonds to the skin, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the bonds of the vertical stabilizer spar boxes to the skin, which could lead to reduced structural integrity of the spar boxes.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of June 28, 2000 (65 FR 37029, June 13, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–11–27, amendment 39–11776 (65 FR 37029, June 13, 2000), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on September 4, 2001 (66 FR 46243). The action proposed to continue to require a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. For certain airplanes, the action also proposed to continue to require prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of its attachment to the skin. The action proposed to add repetitive ultrasonic inspections of the subject area, and repair, as necessary. It also proposed to add installation of fasteners to reinforce the bonds to the skin, which would terminate the repetitive inspections.

Comments

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

Remove Modification Number From Applicability Statement

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to remove the modification number from the applicability statement. The commenter notes that the referenced modification is not valid for production airplanes.

The FAA concurs with the commenter's request and has revised the applicability statement of this final rule accordingly. We find that this change does not expand the scope of the proposed AD but merely provides clarification by eliminating redundancy.

Give Credit for Fastener Installation per Other Service Information

One commenter requests that we revise the proposed AD to refer to Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, as an acceptable source of service information for accomplishment of the installation of fasteners specified in paragraph (f) of the proposed AD. Paragraph (f) of the proposed AD refers to Airbus Service Bulletin A320–55–1028, Revision 03, dated November 2, 2000, as the appropriate source of service information for the installation of new fasteners. The commenter states that no substantive procedural changes were made from Revision 02 to Revision 03 of the service bulletin, and no additional work is necessary for airplanes on which Revision 02 was accomplished. Revision 03 merely clarifies recommendations for repeat inspections if the modification is only partially accomplished.

We concur with the commenter's request for the reasons specified by the commenter. Also, since the issuance of the proposed AD, Airbus has issued Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001. The procedures in Revision 04 of the service bulletin are essentially the same as those in Revision 03. Therefore, we have revised paragraph (f) of this AD to specify that fastener installation must be accomplished in accordance with Airbus Service Bulletin A320–55–1028, Revision 04. Also, we have added a new note, Note 2, to this final rule and renumbered subsequent notes accordingly, to give credit for accomplishment of the installation of fasteners prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–55–1028, Revision 02 (based on the commenter's request), or Revision 03. We have also revised the applicability statement of this final rule to exclude airplanes on which Airbus Service Bulletin A320–55–1028, Revision 02, Revision 03, or Revision 04, has been accomplished, from the applicability of this AD. (The applicability statement of the proposed AD states that airplanes on which Airbus Service Bulletin A320–55–1028, Revision 03, has been accomplished are not subject to this AD.)

Request To Revise Proposed Compliance Time for Modification

The commenter requests that we revise the compliance time of paragraph (f) of the proposed AD to refer to ''5 years from the 'entry in service' of the airplane'' instead of ''5 years after the date of manufacture of the airplane.'' The commenter points out that the date of manufacture is the date of the first flight of the airplane, whereas the date of ''entry into service'' is the date of delivery of the airplane. The difference between these dates could be one month or more. The commenter recommends that we make this change to avoid operator questions.

We do not concur. For clarification, we define the ''date of manufacture'' as the date of issuance of the Certificate of Airworthiness. We find that this constitutes a definitive date when all of the manufacturing processes are completed. We have determined that this date should be readily discernible by operators, and no change to the final rule is necessary in this regard.

Explanation of Additional Changes to Final Rule

In addition to the changes described previously, several typographical errors have been corrected in this final rule.

Conclusion

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

Cost Impact

There are approximately 23 Model A319, A320, and A321 series airplanes of U.S. registry that will be affected by this AD.

The repetitive inspections in this AD will take approximately 3 to 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the repetitive inspections required by this AD is estimated to be $4,140 to $9,660, or $180 to $420 per airplane, per inspection cycle.

The installation of fasteners in this AD will take approximately 5 to 480 work hours per airplane to accomplish, depending upon the configuration of the airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the installation required in this AD is estimated to be $6,900 to $662,400, or $300 to $28,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11776 (65 FR 37029, June 13, 2000), and by adding a new airworthiness directive (AD), amendment 39–12652, to read as follows:

2002–03–11 Airbus Industrie: Amendment 39–12652. Docket 2000–NM–413–AD. Supersedes AD 2000–11–27, Amendment 39–11776.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–55A1027, dated May 13, 2000, Revision 01, dated August 1, 2000, or Revision 02, dated February 13, 2001; except those airplanes on which Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, Revision 03, dated November 2, 2000, or Revision 04, dated April 13, 2001; has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bonds of the vertical stabilizer spar box to the skin, which could lead to reduced structural integrity of the spar boxes, accomplish the following:

Restatement of Requirements of AD 2000–11–27

Ultrasonic Inspection

(a) Within 60 days after June 28, 2000 (the effective date of AD 2000–11–27, amendment 39–11776): Perform a one-time ultrasonic inspection to detect disbonding (damage) of the skin attachments at the stringers and spars of the vertical stabilizer, left- and right-hand sides, in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001.

Modification (for Certain Airplanes)

(b) For airplanes with manufacturer's serial numbers listed in paragraph B of the Planning Information of Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001: Prior to or concurrent with the ultrasonic inspection required by paragraph (a) of this AD, modify the vertical stabilizer to ensure proper reinforcement of the structure/skin attachments, in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999.

New Requirements of This AD

Repetitive Inspections and Repair, If Necessary

(c) Within 1,100 flight cycles from the previous inspection performed in accordance with paragraph (a) of this AD, or 60 days after the effective date of this AD, whichever occurs later: Perform an ultrasonic inspection to detect disbonding of the skin attachment at the spars and the stringers of the vertical stabilizer spar box, in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001.

(d) If no damage is detected, or if only a single area of damage is found and it is less than or equal to an area of 300 square millimeters (mm^2) during any ultrasonic inspection required by this AD, repeat the ultrasonic inspection thereafter at intervals not to exceed 1,100 flight cycles.

(e) If any damage is detected and the area of damage found is greater than 300 mm^2, or if multiple areas of damage are found on one specific component (stringer/spar attachment) during any ultrasonic inspection required by this AD, prior to further flight, accomplish applicable repairs in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001. Repeat the ultrasonic inspection thereafter at intervals not to exceed 1,100 flight cycles.

Modification

(f) Within 5 years after the date of manufacture of the airplane: Install fasteners to reinforce the attachment between the skin panel and areas of the vertical stabilizer affected by disbonding, in accordance with Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001. Accomplishment of the installation terminates the repetitive inspections required by paragraph (c) of this AD.

Note 2: Installations accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, or Revision 03, dated November 2, 2000, are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–11–27, amendment 39–11776, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(i) The actions shall be done in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999; Airbus Service Bulletin A320–55A1027, dated May 13, 2000, Airbus Service Bulletin A320–55A1027, Revision 01, dated August 1, 2000, or Airbus Service Bulletin A320–55A1027, Revision 02, dated February 13, 2001; and Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001.

(1) The incorporation by reference of Airbus Service Bulletin A320–55A1027, Revision 01, dated August 1, 2000; Airbus Service Bulletin A320–55A1027, Revision 02, dated February 13, 2001; and Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999; and Airbus Service Bulletin A320–55A1027, dated May 13, 2000; was approved previously by the Director of the Federal Register as of June 28, 2000 (65 FR 37029, June 13, 2000).

(3) Copies may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–520–159(B), dated December 13, 2000.

Effective Date

(j) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on February 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3455 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. FHWA–2001–10077]

RIN 2125–AE89

Design Standards for Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA revises its policy on the design standards that apply to highway construction and reconstruction projects on the National Highway System (NHS). The previous standards were the 1994 version of the American Association of State Highway and Transportation Officials' (AASHTO) publication, ''A Policy on Geometric Design of Highways and Streets.'' A 2001 revision of this publication has replaced the 1994 version and FHWA adopts this new version as its policy on design standards for highway construction and reconstruction projects on the NHS.

DATES: This final rule is effective March 14, 2002. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of March 14, 2002.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Seppo Sillan, Office of Program Administration (HIPA), (202) 366–1327. *For legal information:* Mr. Harold Aikens, Office of the Chief Counsel (HCC–40), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This final rule is based on the FHWA's notice of proposed rulemaking (NPRM), FHWA Docket No. FHWA–2001–10077, Design Standards for Highways, at 66 FR 48103 (September 18, 2001). All comments received in response to the NPRM have been considered in adopting this final rule. For discussion of comments, see the section entitled ''Discussion of Comments'' later in this final rule.

Electronic Access and Filing

This document, the NPRM, and all comments received may be viewed online through the Document Management System (DMS) at: *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov.*

The current design standards are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying at the FHWA Washington, DC, Headquarters and field offices as prescribed in 49 CFR part 7. Copies of the current AASHTO publications are also available for purchase from AASHTO by telephone (800) 231–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716 or at its Web site at *www.transportation.org.*

Background

The standards, policies, and standard specifications that have been approved by the FHWA for application on all construction and reconstruction projects on the NHS are incorporated by reference in 23 CFR part 625. The current document specified in § 625.4(a)(1) is the 1994 edition of ''A Policy on Geometric Design of Highways and Streets'' (Policy).[1] The AASHTO recently revised the Policy and issued the 2001 edition which the FHWA is adopting as its policy for design standards for all construction and reconstruction projects on the NHS. The primary reason for development of the new document was to update the previous Policy to incorporate the latest design criteria. See ''Summary of Changes'' below for a description of the changes made in the 2001 edition.

The AASHTO is an organization which represents 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those agencies. The Secretary of Transportation is an ex officio member, and U.S. DOT officials participate in various AASHTO activities as nonvoting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides and

[1] A Policy on Geometic Design of Highways and Streets, 1994, is available from AASHTO by telephone (800) 321–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716 or at their Web site at *www.transportation.org.*

related materials for use by the States for highway projects. Many of the standards, policies, and standard specifications approved by the FHWA and incorporated into 23 CFR part 625 were developed and issued by the AASHTO. Revisions to such documents of the AASHTO are independently reviewed and adopted by the FHWA before they are applied to NHS projects.

The National Highway System (NHS) was established by the National Highway System Designation Act of 1995, Public Law 104–59, Nov. 28, 1995, 109 Stat. 568. The NHS includes the Interstate System and other principal arterials serving major travel destinations and transportation needs, connectors to major transportation terminals, the Strategic Highway Network and connectors, and high priority corridors identified by law.

Generally, the criteria in the functional chapters of the Policy on local roads and streets and collectors (Chapters 5 and 6) are not applicable to projects on the NHS. However, if highway segments functionally classified as less than principal arterials are incorporated in the NHS by virtue of being Strategic Highway Network Connectors or Intermodal Connectors, the standards used may be those appropriate for the functional classification of the segment, taking into account the type of traffic using the segment.

Although the standards contained in the Policy apply to the Interstate System, additional guidance applicable to the design of highways on the Interstate System is included in another AASHTO publication, ''A Policy on Design Standards—Interstate System.'' [2] The latest edition of this publication is dated July 1991; no revisions to this document are proposed at this time.

Summary of Changes

The changes in the 2001 Policy were developed as the result of formal research projects and information contributed by the AASHTO and the FHWA staff experts. The changes included such items as the criteria for stopping sight distance, height of eye and height of object for measuring sight distance, transition design controls, and intersection sight distance. The NPRM cited earlier in this section should be consulted for a more complete description of the changes.

[2] A Policy on Design Standards—Interstate System, 1991, is available from AASHTO (see footnote 1).

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written or electronic comments on the NPRM to FHWA Docket No. FHWA–2001–10077 on or before November 19, 2001. The FHWA received two comments to the docket. Both comments were from State DOT's. One commenter feels that ''A Policy on Design Standards—Interstate System'' (Interstate Policy) should be eliminated so that the engineer/designer only has to refer to one document. As mentioned under the caption **SUPPLEMENTARY INFORMATION** although the standards contained in the Policy apply to the Interstate System, additional standards applicable to the design of highways on the Interstate System are included separately in the Interstate Policy. The FHWA believes these additional standards are necessary and that the Interstate Policy cannot be eliminated. However, in the future, the two publications could be merged by including the standards in the Interstate Policy under a separate heading or chapter in the Policy. Both the FHWA and this commenter will be a party to future revisions of the Policy so inclusion of the Interstate Policy can be addressed at that time. The other commenter agreed with the changes and recommended that the FHWA adopt the new Policy.

Rulemaking Analyses and Notices

In response to the FHWA solicitation of public comment on this action, we received two comments. These comments have been considered in evaluating whether any change to this action is needed. The FHWA determines that no change is required.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. Although the new Policy has been revised to incorporate the latest research, the basic criteria remain essentially the same. These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, although the new Policy has been revised to incorporate the latest research, the basic criteria remain essentially the same. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). 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 (2 U.S.C. 1531 *et seq*).

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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.

Executive Order 13045 (Protection of Children)

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

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation

of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

Issued on: February 4, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 625, as set forth below:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1.The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48(b) and (n).

2. In § 625.4, revise paragraph (a)(1) to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(a) * * * (1) A Policy on Geometric Design of Highways and Streets, AASHTO 2001. [See § 625.4(d)(1)]

* * * * *

[FR Doc. 02–3217 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–003–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), approve, with certain exceptions, a proposed amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to Title 26, Chapter 4, Subchapters 3 through 12 of the Administrative Rules of Montana (ARM). Montana revised its program to be consistent with the corresponding Federal regulations, incorporate additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 E. B Street, Room 2128; Casper, WY 82601–1918; Telephone: (307) 261–6550, Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letters dated February 1, 1995, and February 28, 1995, Montana sent us an amendment to its program (Administrative Record Nos. MT–12–01 and MT–12–05) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to letters dated July 2, 1985, May 11, 1989, and March 29, 1990 (Administrative Record Nos.

MT–60–01, MT–60–04, and MT–60–07) that we sent to Montana in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 926.16(b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), (e)(8), (f), (h), (i), and (j); and at its own initiative. Montana proposed changes to: ARM 26.4.301, definitions; ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.308, operations plan; ARM 26.4.314, plan for protection of the hydrologic balance; ARM 26.4.321, transportation facilities plan; ARM 26.4.404, review of application; ARM 26.4.405, findings and notice of decision; ARM 26.4.405A, improvidently issued permits: general requirements; ARM 26.4.405B, improvidently issued permits: revocation; ARM 26.4.407, conditions of permit; ARM 26.4.410, permit renewal; ARM 26.4.501A, final grading requirements; ARM 26.4.505, burial and treatment of waste materials; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.524, signs and markers; ARM 26.4.601, general requirements for road and railroad loop construction; ARM 26.4.602, location of roads and railroad loops; ARM 26.4.603, embankments; ARM 26.4.605, hydrologic impacts of roads and railroad loops; ARM 26.4.623, blasting schedule; ARM 26.4.633, water quality performance standards; ARM 26.4.634, reclamation of drainages; ARM 26.4.638, sediment control measures; ARM 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.642, permanent and temporary impoundments; ARM 26.4.645, groundwater monitoring; ARM 26.4.646, surface water monitoring; ARM 26.4.702, redistribution and stockpiling of soil; ARM 26.4.711, establishment of vegetation; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.724, use of revegetation comparison standards; ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.825, alternate reclamation: alternate revegetation; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.930, placement and disposal of coal processing waste: special application requirements; ARM 26.4.932, disposal of coal processing waste; ARM 26.4.1001, application requirements; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1002, information and monthly reports; ARM 26.4.1005, drill holes; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1007, grading, soil salvage, storage, and redistribution; ARM 26.4.1009, diversions; ARM 26.4.1011, hydrologic balance; ARM 26.4.1014, test pits: application requirements, review procedures, bonding, and additional performance standards; ARM 26.4.1116, bonding: criteria and schedule for release of bond; ARM 26.4.1116A, reassertion of jurisdiction; ARM 26.4.1141, designation of lands unsuitable: definition; ARM 26.4.1206, notices, orders of abatement and cessation orders: issuance and service; and ARM 26.4.1212, point system for civil penalties and waivers.

We announced receipt of the proposed amendment in the March 15, 1995, **Federal Register** (60 FR 13932; Administrative Record No. MT–12–12). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 14, 1995. We received responses from six federal agencies and one citizen group.

During our review of the amendment, we identified the rules requiring clarification prior to making an evaluation of the proposed revisions. Those rules requiring clarification were: ARM 26.4.301(78), the definition of ''owned or controlled;'' ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.314, plan for the protection of the hydrologic balance; ARM 26.4.404, review of application; ARM 26.4.407, conditions of a permit; ARM 26.4.410, permit renewal; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of offsite-generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.603 and 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.645 and 26.4.646, groundwater and surface water monitoring; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.1001, permit requirement; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1009, diversions; and 26.4.1014, prospecting.

We notified Montana of those rules requiring clarification by letter dated October 17, 1995 (Administrative Record No. MT–12–16). Montana responded with further explanation in a letter dated February 6, 1996 (Administrative Record No. MT–12–19). Following receipt of Montana's February 6, 1996, letter, we identified concerns with ARM 26.4.304, baseline information: environmental resources; ARM 26.4.404, review of application; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of off-site generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.639, sediment ponds and other treatment facilities; ARM 26.4.821, alternate reclamation; ARM 26.4.924 and 26.4.927, disposal of underground development waste; and ARM 26.4.1014, prospecting. We notified Montana of these concerns by letter dated July 10, 1997 (Administrative Record No. MT–12–20).

Meanwhile, at the same time we were reviewing this amendment, Montana made subsequent changes to some of the rules contained in this amendment and submitted them in another amendment dated March 5, 1996 (SPATS No. MT–018–FOR; Administrative Record No. MT–15–01). Those rules were: ARM 26.4.410, permit renewal, ARM 26.4.1001, prospecting permit requirement; and ARM 26.4.1001A, notice of intent to prospect. OSM and Montana subsequently decided to withdraw the prospecting and permit renewal rules from SPATS No. MT–003–FOR and consider them in SPATS No. MT–018–FOR (Administrative Record Nos. MT–12–21 and MT–15–14). These withdrawn rules addressed the required program amendments at 30 CFR 926.16(f), (h), (i), and (j).

Concerning this amendment, Montana responded by letter dated July 17, 2000 (Administrative Record No. MT–12–23), that it would not submit further revisions to this amendment. Montana requested that OSM proceed with the final rule **Federal Register** notice. Montana stated that it would address the existing deficiencies in this amendment in a new submission. OSM then proceeded writing the final rule **Federal Register** notice on SPATS No. MT–003–FOR.

However, during the writing of the final rule, OSM decided to request a meeting with Montana to discuss the unresolved issues in MT–003–FOR. The meeting was held at the Montana Department of Environmental Quality (DEQ), Helena, Montana, on February 27, 2001. During the meeting, OSM and the Montana DEQ decided that some

issues were, in fact, resolvable due to a re-interpretation of Montana's responses and/or a subsequent revision of Montana's rules.

As a result of the February 2001, meeting, Montana submitted revisions and/or additional explanatory information by letter dated May 15, 2001 (Administrative Record No. MT–12–25). Montana submitted additional explanatory information concerning the lack of acid-forming materials in the Montana coal fields to address the issue with ARM 26.4.304(6)(b)(ii)(B). Montana proposed editorial changes to ARM 26.4.407(4). Montana proposed new language at ARM 26.4.505(5) to prohibit acid, acid-forming, toxic, or toxic-forming wastes from being used in an impoundment. Montana proposed new language at ARM 26.4.505(7) to provide that the same notification requirements concerning potential hazards at waste disposal sites also pertain to temporary waste impoundments. Montana proposed new language at ARM 26.4.639 to address the construction of a single spillway and to state that an excavation requires no spillway. Montana proposed to delete the subsection at ARM 26.4.924(15) which OSM disapproved in the August 19, 1992, **Federal Register** notice, and to delete cross-reference to it at ARM 26.4.927(3)(a). This deletion is a partial response to a required program amendment which OSM put on the Montana program on August 19, 1992 at 30 CFR 926.16(e)(9).

We announced receipt of the proposed amendment in the June 1, 2001, **Federal Register** (66 FR 29741). In the same document, we reopened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–12–28). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 2, 2001. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with the exceptions as described below.

A. Minor Revisions to Montana's Rules

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

26.4.301, ARM, subsections (79) through (119), (121) through (133), and (135) through (137), (30 CFR 701.5), definitions;

26.4.407, ARM, subsections (1) and (2), (30 CFR 773.17), conditions of permit;

26.4.601, ARM, subsection (7), (30 CFR 816.150/817.150), general requirements for road and railroad loop construction;

26.4.639, ARM, subsection (18)(c), (30 CFR 816.49/817.49), sedimentation ponds and other treatment facilities;

26.4.711, ARM, subsections (2), (3), (4), and (5), (30 CFR 816.111/817.111 and 816.116/817.116), establishment of vegetation;

26.4.924, ARM, subsections (5), (10) through (14), (16), (17), (18), and (20); (30 CFR 816.71/817.71, 816.81/817.81, and 816.83/817.83), disposal of underground development waste: general requirements;

26.4.1005, ARM, subsection (2); (30 CFR 815.15(i) and 816.41(a)/817.41(a)), drill holes;

26.4.1006, ARM, subsection (1); (30 CFR 816.150/817.150, 816.180/817.180, and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM subsection (2); (30 CFR 815.15(d)), grading, soil salvage, storage, and redistribution; and

26.4.1009, ARM, subsection (1); (30 CFR 816.43/817.43), diversions.

Because these changes are minor and nonsubstantive, we find that they will not make Montana's rules less effective than the corresponding Federal regulations.

B. Revisions to Montana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Montana proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

26.4.304, ARM, subsection (6)(a)(iii), (30 CFR 780.21/784.14), baseline information: environmental resources;

26.4.308, ARM, subsection (2), (30 CFR 780.11/784.11 and 780.37/784.24), operations plan;

26.4.314, ARM, subsection (3), (SMCRA section 510(b) and 30 CFR 780.21/784.14), plan for protection of the hydrologic balance;

26.4.405, ARM, subsections (6) and (8), (30 CFR 773.15), findings and notice of decision;

26.4.501A, ARM, subsection (3)(a), (30 CFR 816.101/817.101), final grading requirements;

26.4.524, ARM, subsection (2), (30 CFR 816.11/817.11), signs and markers;

26.4.601, ARM, subsection (5), (30 CFR 816.151(a)(1)/817.151(a)(1)), general requirements for road and railroad loop construction;

26.4.602, ARM, subsection (2), (30 CFR 816.151/817.151 and 30 CFR 780.37/784.24), location of roads and railroad loops;

26.4.603, ARM, Introduction and subsection (9), (30 CFR 816.49/817.49), embankments;

26.4.605, ARM, subsection (3)(a)(i), (30 CFR 816.151/817.151), hydrologic impact of roads and railroad loops;

26.4.623, ARM, subsection (2)(b)(iii), (30 CFR 816.64/817.64), blasting schedule;

26.4.633, ARM, subsection (2), (30 CFR 816.46/817.46), water quality performance standards;

26.4.634, ARM, subsections (1) and (2), (30 CFR 816.102 / 817.102), reclamation of drainages;

26.4.638, ARM, subsection (2)(a), (30 CFR 816.45(b)(1)/817.45(b)(1)), sediment control measures;

26.4.639, ARM, subsections (1), (10)(c), and (18), Introduction, (30 CFR 816.46(b)(4) and (c)(2)/817.46(b)(4) and (c)(2), and 30 CFR 816.49(a)(2) and (a)(11)/817.49(a)(2) and (a)(11)), sedimentation ponds and other treatment facilities;

26.4.642, ARM, subsections (5) and (8), (30 CFR 816.49/817.49 and 816.84/817.84), permanent and temporary impoundments;

26.4.702, ARM, subsection (4), (30 CFR 780.23(a)(2)/784.15(a)(2)), redistribution and stockpiling of soil;

26.4.711, ARM, subsection (6), (30 CFR 816.116/817.116), establishment of vegetation;

26.4.927, ARM, subsection (2)(c), (30 CFR 816.71/817.73), disposal of underground development waste: durable rock fills;

26.4.932, ARM, subsection (8)(a)(ii), (30 CFR 816.81(a)/817.81(a) and 816.83/817.83), disposal of coal processing waste;

26.4.1002, ARM, subsections (1) and (2), (30 CFR 815.1 and 816.10/817.10), information and monthly reports;

26.4.1005, ARM, subsection (3), (30 CFR 815.15(g)), drill holes;

26.4.1006, ARM, subsections (2) through (4), (30 CFR 815.15, 816.150/817.150, 816.180/817.180 and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM, subsection (1), (30 CFR 815.15(c)), grading, soil salvage, storage, and redistribution;

26.4.1009, ARM, subsection (2), (30 CFR 816.43/817.43), diversions;

26.4.1011, ARM, subsection (1), (30 CFR 772.11, 772.12, 772.13 and 815.15), hydrologic balance;

26.4.1116, ARM, subsection (7)(c), (30 CFR 800.40), bonding: criteria and schedule for release of bond;

26.4.1116A, ARM, subsections (1) and (2), (30 CFR 700.11), reassertion of jurisdiction;

26.4.1141, ARM, subsection (3), (30 CFR 762.5), designation of lands unsuitable: definition;

26.4.1212, ARM, subsection (1), (30 CFR 845.13(b)(1)), point system for civil penalties and waivers.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. ARM 26.4.301(78), 26.4.303, 26.4.404(7) Through (10), 26.4.405(5), 26.4.405A, 26.4.405B, and 26.4.1206(1); Ownership and Control

Montana proposed numerous revisions to its regulatory program concerning ownership and control. These revisions were submitted in response to two Part 732 letters sent to Montana by OSM on May 11, 1989 and January 13, 1997 (Administrative Record Nos. MT–60–04 and MT–60–09). Many of these revisions were found to be no less effective than the corresponding Federal regulations. However, during the evaluation of SPATS No. MT–003–FOR, OSM again revised its ownership and control regulations in response to recent legal challenges contesting the validity of OSM's regulations. The final rule **Federal Register** notice concerning OSM's revised regulations was published on December 19, 2000 (65 FR 79582). In the future, OSM will send a current Part 732 letter to all States, according to the requirements of 30 CFR 732.17(d), to advise the States of ownership and control revisions which they need to make to their State regulatory program. Therefore, at this time, OSM defers on Montana's proposed revisions concerning ownership and control. The sections of the Administrative Rules of Montana (ARM) where a decision is being deferred, are: ARM 26.4.301(78); 26.4.303 Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B; and 26.4.1206(1).

D. ARM 26.4.301(120), Definition of ''Test Pit''

OSM placed a required program amendment (30 CFR 926.16(b)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise the definition of ''test pit'' to eliminate the phrase ''or for the purpose of developing a test market.'' OSM placed the required program amendment on the Montana program as the Federal counterpart regulations for coal exploration at 30 CFR 772.14(b) allow for the extraction of more than 250 tons of coal under an exploration permit if the coal is intended for testing purposes only. There is no Federal provision for using coal extracted under an exploration permit for developing a market.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a revision at ARM 26.4.301(120) to revise the definition of ''test pit'' to delete the phrase ''or for the purpose of developing a test market.'' Therefore, the Director finds the Montana revised rule to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(b).

E. ARM 26.4.304(5), (6)(a), and (6)(b), Baseline Information: Environmental Resources

Montana proposed to move the requirements for groundwater baseline information from ARM 26.4.304(5) to revised ARM 26.4.304(6)(a)(ii), and to revise the surface water baseline information requirements at ARM 26.4.304(6)(b)(ii)(B). Montana proposed to delete from ARM 26.4.304(6)(a)(ii) and 26.4.304(6)(b)(ii)(B), the need to provide baseline information for ''total iron and total manganese,'' and to add the requirement that the applicant provide baseline information for both surface and groundwater concerning ''concentrations of dissolved metals as prescribed by the department.'' In addition, Montana proposed to delete from ARM 26.4.304(6)(b)(ii)(B) the requirement for surface water baseline information concerning acidity and alkalinity.

The Federal regulations at 30 CFR 780.21(b)(1) and (2)/784.14(b)(1) and (2) concerning baseline information for surface water and groundwater information require: (1) Total iron and total manganese, and (2) acidity and alkalinity, if there is a potential for acid drainage from the proposed mining operation. The Federal regulation at 30 CFR 732.15(a) requires the States to provide program elements that are in accordance with the provisions of SMCRA and consistent with the requirements of the Federal regulations.

In the February 6, 1996, response (Administrative Record No. MT–12–18), Montana stated that OSM's requirements for total iron, total manganese, and acidity analyses are based upon eastern U.S. problems and do not typically relate to areas where coal mining operations currently exist in Montana with a predominance of alkaline conditions. OSM had requested in the October 17, 1995, and July 10, 1997, letters that Montana provide documentation supporting Montana's characterization of alkaline coal fields, such as a compilation of historic surface-water and overburden sampling information from coal mining permits, or geological reports of analyses conducted over the coal mining regions of Montana in order to approve the proposed deletion of total iron, total manganese, acidity and alkalinity as parameters for surface water baseline information (Administrative Record Nos. MT–12–16 and MT–12–20).

Montana did not initially provide such documentation but responded by letter dated February 6, 1996, that: (1) OSM's requirements for iron, manganese, alkalinity and acidity are based upon eastern U.S. problems and Montana conditions are alkaline; (2) Montana has the authority at ARM 26.4.304(5)(a)(ii) and (b)(ii)(B), and ARM 26.4.304(5)(d) to request additional analyses as needed; (3) Montana's Water Resource Guidelines, currently being revised, provide guidance for water analyses; and (4) OSM could impose additional analyses on Federal lands permits when they are reviewed, if OSM believes additional water analyses are needed (Administrative Record No. MT–12–19).

Following the meeting in Helena, Montana, on February 27, 2001, Montana submitted a letter dated May 15, 2001, containing surface water quality data documenting alkaline conditions at five mine areas in Montana (Administrative Record No. MT–12–25). This documentation is representative of surface conditions in Montana. With this information, OSM can approve Montana's proposed deletions to groundwater baseline information and surface water baseline information, as no less effective than the Federal regulations. The Director approves these revisions.

F. ARM 26.4.314(5), Protection of the Hydrologic Balance

At ARM 26.4.314(5), Montana proposed to delete the word ''probable'' from the requirement to provide an assessment of the ''probable cumulative hydrological impacts.'' As both SMCRA section 510(b)(3) and 30 CFR 780.21(g)(1)/784.14(g)(1) require that an applicant provide an assessment of the ''probable cumulative hydrologic impacts'' of the proposed operation, OSM requested that Montana explain the deletion of the term ''probable.'' Montana responded that the term ''probable cumulative hydrologic

impacts'' is undefined in the Montana rules, while ''cumulative hydrologic impacts'' is defined. Montana further stated that ''cumulative hydrologic impacts'' in the Montana program includes ''expected'' impacts, which has the same connotation as ''probable.'' With this explanation, the Director approves the proposed revision to ARM 26.4.314(5) as no less effective than the Federal regulation and no less stringent than SMCRA.

G. ARM 26.4.321(1) and (3), Transportation Facilities Plan

OSM placed required program amendments (30 CFR 926.16(e)(3) and (e)(4)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436). The required program amendment at 30 CFR 926.16(e)(3) required Montana to modify its program to specify certification content requirements no less effective than 30 CFR 780.37(b)/784.24(b). The required program amendment at 30 CFR 926.16(e)(4) required Montana to incorporate application requirements no less effective than 30 CFR 780.37(a)(2), (3), and (6)/784.24(a)(2), (3), and (6). OSM placed the required program amendments on the Montana program as the revisions proposed in the June 19, 1990, submittal (Administrative Record No. MT–7–01) did not address these Federal counterpart provisions.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana subsequently proposed rule revisions at ARM 26.4.321 which addressed the certification content requirements and application requirements for the mining operations and reclamation plan portions of applications for permits for both surface and underground mining activities. OSM found that these Montana ARM revisions addressed earlier programmatic deficiencies identified at 30 CFR 926.16(e)(3) and (e)(4). Therefore, the Director finds the Montana revised rules to be no less effective than the Federal requirements and approves the proposed language. The Director removes the required program amendments at 30 CFR 926.16(e)(3) and (e)(4).

H. ARM 26.4.404(5)(b), Review of Application: Properties Listed on or Eligible for Listing on the National Register of Historic Properties

OSM placed a required program amendment (30 CFR 926.16(c)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise ARM 26.4.404(5)(b) to require that a determination of effects is completed for all properties listed on or eligible for listing on the National Register of Historic Properties (NRHP). OSM placed the required program amendment on the Montana program as the proposed revision to ARM 26.4.404(5)(b) applied to ''all listed eligible cultural resource sites'' rather than to ''properties listed on or eligible for listing on the NRHP,'' as required by the Federal regulation at 30 CFR 773.15(c)(11).

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana revised ARM 26.4.404(5)(b) to read ''all listed or eligible cultural resource sites in accordance with 30 CFR 800.'' 36 CFR 800 applies to the Advisory Council on Historic Preservation and properties listed on or eligible for listing on the NRHP. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(c).

I. ARM 26.4.405(6)(1), Findings and Notice of Decision

OSM placed a required program amendment (30 CFR 926.16(d)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to change the cross-reference at ARM 26.4.405(6)(l) to ARM 26.4.1302, which governs the use of existing structures, rather than deleted rule ARM 26.4.309. In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a rule revision correcting the incorrect cross-reference to ARM 26.4.1302. Therefore, the Director finds the revised rule at ARM 26.4.405(6)(l) to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(d).

J. ARM 26.4.407(4), Conditions of Permit

At ARM 26.4.407(4), Montana proposed to require as a condition of each permit that a permittee, within 30 days of issuance of a cessation order under the Federal or State program, must provide the department with certain specified information except ''where a state cessation order is granted and remains in effect.'' The Federal counterpart at 30 CFR 773.17(i) is similar to Montana's proposal except that the Federal provision allows an exception to the applicable requirement only ''where a stay of a cessation order has been granted and remains in effect.''

In response to OSM's comment in the formal issue letter dated October 17, 1995 (Administrative Record No. MT–12–16) that Montana needed to revise ARM 26.4.407(4) to allow an exception to the requirements of the rule only where ''a stay of a cessation order has been granted and is in effect,'' Montana stated that the typographical error would be corrected (Administrative Record No. MT–12–19). By letter dated May 25, 2001, Montana submitted a revision to OSM which corrected the typographical error at ARM 26.4.407(4) to read ''a stay of the cessation order has been granted'' (Administrative Record No. MT–12–25). With this information, the Director finds ARM 26.4.407(4) to be no less effective than the Federal counterpart and approves the revision.

K. ARM 26.4.505(4) Through (8), Burial and Treatment of Waste Materials and Disposal of Off-Site-Generated Waste and Fly Ash

a. Burial and Treatment of Waste Materials

Montana proposed revisions at ARM 26.4.505 in response to a requirement which OSM codified at 30 CFR 926.16(e)(2) to incorporate requirements for the disposal of waste, including coal mine waste on strip mines, in a manner no less effective than the requirements at 30 CFR 816.102(e)/817.102(e) and 816.81/817.81 through 816.84/817.84. OSM placed the required program amendment on the Montana program as the revised definition of ''waste'' at ARM 26.4.301(132), now (133), included coal processing waste to be disposed of on surface mining operations which are governed by ARM 26.4.505 and 26.4.510. However, ARM 26.4.505 and 26.4.510 regulate surface mining operations; coal processing waste is not addressed at these rules. Existing language and proposed revisions at ARM 26.4.505(3) and (4) prohibit waste disposal in the construction of embankments for impoundments and in a waste disposal structure located on the surface of the ground. Therefore, the requirements of 30 CFR 816.84(a)/817.84(a) pertaining to impounding structures constructed of coal mine waste and the requirements of 30 CFR 816.83/817.83 for disposal of coal mine waste in refuse piles, are not addressed in the Montana program at 26.4.505 and 26.4.510. The Federal regulations require that any disposal of coal mine waste, whether in impounding structures or in excavated areas of strip mines, must meet the general requirements of 30 CFR 816.102(e)/817.102(e) and 816.81/817.81.

OSM told Montana in its October 17, 1995, letter (Administrative Record No. MT–12–16) that in order to be no less effective than the Federal regulations, Montana must revise ARM 26.4.505 to

include the following requirements: (1) Waste should be hauled or conveyed and placed in controlled manner to achieve the purposes itemized in 30 CFR 816.81(a)(1) through (5)/817.81(a)(1) through (5); (2) design and design certification, and foundation and abutment stability under all conditions of construction, should be in accordance with 30 CFR 816.81(c)/817.81(c); and (3) foundation investigations should be in accordance with 30 CFR 816.81(d)/817.81(d).

Montana responded in a letter dated February 6, 1996 (Administrative Record No. MT–12–19), stating that waste disposal in structures outside of mine excavations is prohibited at surface mines in Montana's program, and that Montana has the necessary requirements for underground mines. Montana has no coal preparation plants. Therefore, the disposal of coal processing waste in structures outside of mine excavations does not need to be addressed in the Montana program. Montana desires to dispose of coal processing waste in excavation pits.

There are no Federal regulations prohibiting the disposal of coal processing waste in excavation pits. Therefore, the Montana proposed rules are not inconsistent with the Federal regulations and the Director approves the proposed Montana revisions at ARM 26.4.505 and 26.4.510. The Director removes the required program amendment at 30 CFR 926.26(e)(2).

b. Temporary Waste Impoundments

During the review of proposed ARM 26.4.505(5), OSM identified deficiencies relating to the lack of: (1) a requirement that any temporary impoundment of waste which includes coal mine waste must meet the general requirements of ARM 26.4.505, in addition to those specified in paragraph (5); (2) a requirement for adequate protection against erosion and corrosion for outlet works; (3) a requirement that the diversion of runoff from above or off of the impounding structure be in accordance with 30 CFR 816.84(d)/817.84(d); and (4) a requirement for design and performance criteria for removal of 90 percent of the water stored during the design event within the 10 day period following the event in accordance with 30 CFR 816.84(e) and (f)/817.84(e) and (f) (Administrative Record No. MT–12–16).

Montana responded to OSM's deficiency list by: (1) Stating that paragraph (2) also pertains to coal waste impoundments and that Montana will add another subsection to (5) indicating that acid, toxic, acid-forming, and toxic-forming wastes may not be included in temporary waste impoundments; (2) stating that Montana will add the term ''outlet works'' to (5)(c); and (3) referencing sections in the State program which correspond to 30 CFR 816.84(d), (e), and (f)/817.84(d), (e), and (f) (Administrative Record No. MT–12–19).

OSM responded to Montana by letter dated July 10, 1997, stating that: (1) ARM 26.4.505(7) needed to be cross-referenced under ARM 26.4.505(5) to assure that emergency procedures would apply to temporary impoundments; and (2) Montana's proposal to rewrite ARM 26.4.505 to prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments would assure that its program is no less effective than the Federal regulations.

Following OSM's meeting with Montana on February 27, 2001, Montana submitted the proposed revisions at ARM 26.4.505(5)(c) through (5)(e) and (7) to OSM by letter dated May 15, 2001 (Administrative Record No. MT–12–25). The proposed revisions assure that emergency procedures would apply to temporary impoundments and would prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments. The Director, therefore, finds that the deficiencies at ARM 26.4.505 have been addressed and Montana's proposed revisions are no less effective than the Federal counterpart regulations. The Director approves revised ARM 26.4.505.

c. Disposal of Offsite-Generated Waste and Fly Ash

During the review of the burial and treatment of waste materials (at Finding No. 11a above), OSM raised an issue concerning the impact of the revisions at ARM 26.4.505. ARM 26.4.505 is cross-referenced at ARM 26.4.510(1) for the disposal of offsite-generated waste and fly ash. OSM's concern was that the requirements of 30 CFR 816.81(b)/817.81(b), which require that coal mine waste material from activities located outside a permit area may be disposed of in the permit area—if it is done with the approval of the regulatory authority—based upon a showing that the disposal would be in accordance with the standards of 30 CFR 816.81(b)/817.81(b), would not be met. However, with the resolution of Finding No. 11a above, OSM believes that the concerns with ARM 26.4.505 and 26.4.510 are resolved as they relate to the disposal of coal mine waste material from activities located outside a permit area.

L. ARM 26.4.519A, Thick Overburden and Excess Spoil

Montana proposed to delete at ARM 26.4.519A the requirement that all highwalls and depressions in thick overburden must be eliminated with spoil and suitable waste materials unless otherwise approved by the Montana DEQ in accordance with ARM 26.4.313(3) and 26.4.821 through 26.4.824. The Federal counterpart requirement to eliminate highwalls and depressions is contained at 30 CFR 816.102(a)(2)/817.102(a)(2). The deleted Montana cross-references concern the reclamation plan and Montana's programmatic allowance for alternate reclamation.

The general programmatic requirement to eliminate all highwalls and depressions used to be contained in the Montana program at ARM 26.4.501A(1). However, in 1999, this programmatic requirement was deleted from the Montana program by the State legislature. OSM has not received the revised Montana rules to evaluate if this requirement is contained elsewhere in the revised program, particularly in light of the proposed deletion at ARM 26.4.519A. Therefore, at this time, the Director defers on the proposed deletion at ARM 26.4.519A until a current rulemaking is submitted by Montana and evaluated by OSM.

M. ARM 26.4.603(9) and 26.4.639(18)(b), Sedimentation Ponds and Other Treatment Facilities; Construction of Sedimentation Ponds Which Meet the Criteria of 30 CFR 77.216A

Montana proposed at ARM 26.4.639(18) to delete the 1.2 seismic safety factor and 1.5 static safety factor requirements for sedimentation ponds that meet the criteria of 30 CFR 77.216(a). At ARM 26.4.603(9), Montana proposed to add 1.2 seismic safety factor and 1.5 static safety factor requirements for the construction of all embankments. The Federal requirement at 30 CFR 816.49(a)(3)(i)/817.49(a)(3)(i) specifies that for all temporary or permanent impoundments (including sedimentation ponds) that meet the criteria of 30 CFR 77.216(a), a 1.2 seismic safety factor and 1.5 static safety factor must be achieved.

Because ARM 26.4.642(2) references ARM 26.4.603, and because a sedimentation pond is defined as an ''impoundment'' in ARM 26.4.301, OSM asked Montana if ARM 26.4.603(9) would apply to all sedimentation ponds and impoundments, regardless of size and temporal nature. In the February 6, 1996, letter, Montana responded that OSM's interpretation was correct in that

ARM 26.4.603(9) applies to all sedimentation ponds regardless of size or nature (Administrative Record No. MT–12–19). With this explanation, the Director approves the revisions at ARM 26.4.639(18)(b) and 26.4.603(9) as no less effective than the Federal regulations.

N. ARM 26.4.639(10)(b) and (19), Sedimentation Ponds and Other Treatment Facilities: Construction of Sedimentation Ponds and Certification of Impoundments

a. Types of Materials Used for Spillways and Limits on the Duration of Spillway Discharges

At ARM 26.4.639(10)(a), Montana proposed to allow sedimentation ponds to be constructed with either a ''single spillway'' or a combination of principal and emergency spillways. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(i)/817.46(c)(2)(i) allows for a single open-channel spillway if configured as specified at 30 CFR 816.49(a)(9)/817.49(a)(9). The Federal regulation also provides that the regulatory authority may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows, or earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities, where sustained flows are not expected. OSM notified Montana that it must further revise proposed ARM 26.4.639(10)(a) to allow for a single open-channel spillway only if it is of nonerodible construction and designed to carry sustained flows, or earth-or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

By letter dated February 6, 1996, Montana responded that it would add language at ARM 26.4.639(10)(a) indicating the types of materials that may be used for spillways and the limits on the duration of spillway discharges, depending on materials used (Administrative Record No. MT–12–19). Montana submitted the proposed language in their May 15, 2001, response (Administrative Record No. MT–12–25). This proposed language is no less effective than the Federal regulation at 30 CFR 816.49(a)(9)/817.49(a)(9) and the Director approves ARM 26.4.639(10)(a).

b. Special Impoundment Certification by an Engineer

At ARM 26.4.639(10)(b), Montana proposed to allow additional criteria for sedimentation ponds which do not meet the requirements of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216(a) and which rely primarily on storage to control runoff from the design precipitation event. The Federal regulations at 30 CFR 816.49(c)(2)(iii)/817.49(c)(2)(iii) require that the operator demonstrate and that a qualified registered professional engineer certify that the pond will safely control the design precipitation event, prior to the approval of a pond that relies on storage to control precipitation. OSM interpreted this revision as being no less effective than the Federal regulations. However, OSM also interpreted Montana's rules as having no counterpart to the Federal requirement that MSHA-sized impoundments be demonstrated and certified by a qualified registered professional engineer that the pond would control a design precipitation event. OSM requested in its October 17, 1995, letter that Montana revise ARM 26.4.639(10)(b) to include such demonstration and certification criteria (Administrative Record No. MT–12–16).

Montana responded by letter dated February 6, 1996, that all ponds, including those which use containment in lieu of a spillway, are covered by the certification requirements of ARM 26.4.639(19) (Administrative Record No. MT–12–19). With this clarification, OSM finds proposed ARM 26.4.639(10)(b) to be no less effective than the Federal regulations. The Director approves this revision.

c. Applicable Montana Storm Event

At ARM 26.4.639(10)(b), Montana proposed to require that an impounding structure relying primarily on storage be designed to contain a 25-year, 24-hour design event, or greater event as specified by the department. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(ii)(B)/817.46(c)(2)(ii)(B) requires that the minimum design be for a 100-year, 6-hour storm event. Because ARM 26.4.639(10)(b) allows for an impounding structure that may contain a smaller design event than the Federal regulations, OSM told Montana that the proposed rule was less effective than the Federal counterpart. OSM suggested that Montana either revise proposed ARM 26.4.639(10)(b) to require containment of a 100-year, 6-hour storm event, or demonstrate that the 25-year, 24-hour storm event produces greater volumes than does the 100-year, 6-hour storm event, in order to be no less effective than the Federal regulation.

Montana's narrative response provided data demonstrating that in all cases the precipitation from the 25-year, 24-hour storm exceeds that of the 100-year, 6-hour storm (Administrative Record No. MT–12–19). In addition, OSM previously approved Montana's use of the 25-year, 24-hour storm event, in lieu of the 100-year, 6-hour storm event, with respect to surface runoff diversions related to refuse piles and coal mine waste impoundments, in the August 19, 1992, **Federal Register** notice concerning SPATS No. MT–04-FOR (Administrative Record No. MT–7–27; 57 FR 37436). With this demonstration, OSM finds that the Montana rule provides for adequate containment for the run-off from a 100-year, 6-hour storm event and OSM's concern is resolved. The Director finds ARM 26.4.639(10)(b) to be no less effective than the Federal regulation and approves the Montana revision.

O. ARM 26.4.639(22), Removal of Sedimentation Ponds and Other Treatment Facilities

At ARM 26.4.639(22)(a)(i), Montana proposed to delete the need for a drainage basin to be stabilized prior to early removal of ponds and treatment facilities (sooner than 2 years) and to delete the cross-reference to meeting the requirements at ARM 26.4.711 through 26.4.735. Montana stated that ARM 26.4.633, which is cross-referenced, covers these requirements. At ARM 26.4.639(22)(a)(ii), Montana proposed to delete the cross-reference to ARM 26.4.735 and revise it to read 26.4.733. This is because ARM 26.4.734 and 26.4.735 no longer exist in the Montana program.

OSM agrees that the counterpart Federal requirements for 30 CFR 816.46(b)/817.46(b) are contained at ARM 26.4.633. However, OSM reviewed and approved the striking of this same language in a final rule **Federal Register** notice dated May 11, 1990 (55 FR 19727; Administrative Record No. MT–5–48). OSM sees no need to approve the deletion of the language at ARM 26.4.629(22)(a)(i) since we have already done so.

P. ARM 26.4.645(6) and 26.4.646(6), Groundwater and Surface Water Monitoring

Montana proposed to add the requirement at ARM 26.4.645(6) and 26.4.646(6) that sampling and water quality analyses be conducted according to the methodology in the 15th edition of ''Standard Methods for Examination of Water and Wastewater'' or 40 CFR Parts 135 and 434, and ''the department of health and environmental sciences document entitled 'Circular WQB–7, Montana Numeric Water Quality Standards' dated April 4, 1994.'' Montana also proposed deleting the

option to elect methodology in Standard Methods when conducting surface water monitoring.

OSM responded that the addition of the State-specific requirement was acceptable as long as Circular WQB–7 did not conflict with any of the provisions of ''Standard Methods for Examination of Water and Wastewater'' or the provisions of 40 CFR parts 136 and 434. Following a review of Circular WQB–7, OSM found it was not in conflict with 40 CFR Parts 136 and 434, or ''Standard Methods for Examination of Water and Wastewater.''

However, Circular WQB–7 is currently being revised. In the near future, Montana intends to submit revised programmatic rules with a more current version of Circular WQB–7 cross-referenced. Therefore, the Director defers a decision on ARM 26.4.645(6) and 26.4.646(6), at this time, until Montana's new rules are submitted and a current version of Circular WQB–7 is reviewed.

Q. ARM 26.4.721 (1), (2) and (3), Eradication of Rills and Gullies

At ARM 26.4.721, Montana proposed to delete the 9-inch standard for determining repair of rills and gullies and to state that for ''extensive rill or gully erosion, the department may require submittal of a plan of mitigation for such features and department approval prior to implementation of repair work.'' The Federal regulations at 30 CFR 816.95(b)/817.95(b) require, under certain circumstances, that rills and gullies be filled, regraded, and stabilized with the topsoil replaced and the area reseeded and replanted. As ARM 26.4.721 included the same requirements as the Federal regulations, with the exception of the need to replace the topsoil, OSM asked Montana to verify that ARM 26.4.702 would provide for soil (topsoil) redistribution to replace topsoil during the repair of rills and gullies.

In the February 6, 1996, response (Administrative Record No. MT–12–19), Montana stated that ARM 26.4.702 is used for soil redistribution in the repair of rills and gullies in situations where soil replacement was included in the original reclamation plan. Montana stated that in some cases, redistribution has included the reuse of the eroded soil materials, or in other cases, redistribution has included the use of ''new'' soil materials such as surface soils. In the case of soil substitutes, such materials as spoils or scoria rock would be used to repair rills and gullies. With this explanation, the Director approves the Montana revision at ARM 26.4.721 as no less effective than the Federal regulations.

R. ARM 26.4.724(6), Use of Revegetation Comparison Standards

Montana proposed to delete the requirement at ARM 26.4.724(6) which allowed the success of revegetation of less than 100 acres to be based on United States Department of Agriculture (USDA) or United States Department of the Interior (USDI) technical guides, when the 100 acres was not a segment of a larger area proposed for disturbance by mining. There is no current Federal equivalent to this provision. There used to be a Federal provision at 30 CFR 816.116(a)/817.116(a) to allow the regulatory authority to measure revegetation success through the use of technical guidance from the USDA or the USDI. However, this provision was abolished in the September 2, 1983, OSM rulemaking concerning revegetation (**Federal Register** 48 FR 40160).

Due to the fact that there is no current Federal counterpart provision to the deleted Montana rule, the Director finds that the Montana program remains no less effective than the Federal regulations and no less stringent than SMCRA with this deletion. The Director approves this deletion.

S. ARM 26.4.726 (2) and (3), Vegetation Production, Cover, Diversity and Utility Requirements

Montana proposed to revise ARM 26.4.726 (2) and (3) to read ''live cover'' instead of ''cover.'' At 30 CFR 816.116(a)(2)/817.116(a)(2), the Federal regulations use the term ''ground cover'' for the evaluation of revegetation success. Ground cover is defined as the area of the ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite.

''Live cover'' is a subset of ''ground cover'' as defined by the Federal regulations. By allowing only the use of ''live cover'' in evaluating compliance with the revegetation success standards, Montana is not allowing the use of litter in evaluating revegetation success. Montana has proposed stricter vegetative standards by which to sample and evaluate revegetated areas. Therefore, the Montana standard is more stringent than the Federal counterpart. The Director finds proposed ARM 26.4.726(2) and (3) to be no less effective than the Federal regulation and approves the revision.

T. ARM 26.4.821(1)(g), Alternate Reclamation: Submission of Plan

At ARM 26.4.821(1)(g), Montana proposed to allow the use of ''technical standards derived from historical data'' for evaluating revegetation success for alternate reclamation, which includes land reclaimed for use as special use pasture and cropland. The approved State program establishes conditions for the use of technical standards derived from historical data at ARM 26.4.724(5). The conditions include the specification that: (1) The data must come from the premine area or from an area that exhibits comparable cover, production, diversity, density, and utility as well as comparable management, soil type, topographic setting, and climate in comparison to those of the premine area; and (2) the data must be generated for a sufficient period of time to encompass the range of climatic variations typical of the premine or other appropriate area, or data generated from the revegetated area. Areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled. Historical records must be established for each plant community that will be compared to specific reclaimed area plant communities.

The Federal regulations at 30 CFR 816.116(a)(2)/817.116(a)(2) state that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, and stocking. For grazing land, pastureland, or cropland, the Federal regulations at 30 CFR 816.116(b)(1) and (2)/817.116(b)(1) and (2) allow the use of reference areas or such other success standards approved by the regulatory authority for evaluating revegetation success. OSM has previously approved the use of technical standards derived from historical data for evaluating revegetation success on grazing land in Montana (March 21, 1991, **Federal Register**; 56 FR 11666). Further, the conditions set for use of technical standards derived from historical data by Montana ensure that the requirements of 30 CFR 816.116(a)(2) /817.116(a)(2) are met. Therefore, use of technical standards is acceptable for evaluating special use pastureland and ''cropland. The Director finds that the proposed revision at ARM 26.4.821(1)(g), concerning the use of technical standards derived from historical data for setting revegetation success standards on cropland and special use pasture, is not inconsistent

with and is no less effective than the Federal regulations. The Director approves the revision.

U. ARM 26.4.825(4)(a) and (c) and (6), Alternate Reclamation: Alternate Revegetation

Montana proposed to revise ARM 26.4.825(4)(a) and (c) and (6) to read ''cropland'' instead of ''hayland.'' The Federal regulations at 30 CFR 701.5 define cropland to include land used for hay crops, which is the same as hayland.

ARM 26.4.825 requires that all mined lands must be returned to a postmining land use of grazing land and fish and wildlife habitat. Any other postmining land use is considered to be alternate reclamation. The effect of the proposed change at ARM 26.4.825(4)(a) is to require that if the proposed land use is special use pasture, then the area must have a 5 year history of being utilized as special use pasture or cropland. The State may allow deviations in the location of special use pastures from the exact location of premining special use pasture or cropland (rather than hayland). There is no Federal counterpart to this Montana rule. While the definition of cropland is broader than hayland, the proposed change does not render the State program less effective than the Federal regulations.

The proposed change at ARM 26.4.825(4)(c) exempts pastureland from ARM 26.4.724(1), the establishment of native plant community reference areas, and ARM 26.4.728, which requires a predominant composition of native species.

The definition of pastureland at 30 CFR 701.5 states that it consists of land primarily used for the long-term production of domesticated forage plants. 30 CFR 816.116(b)(1) / 817.116(b)(1) allows either the use of reference areas or such other success standards which are approved by the regulatory authority. Although there is no direct Federal equivalent to ARM 26.4.825(4)(c), the Montana revision is not inconsistent with and is no less effective than the Federal regulations.

The effect of the revision at ARM 26.4.825(6) is to require enhancement of wildlife values and protection of wetlands when special use pasture or cropland is proposed. The Federal counterparts at 30 CFR 816.97(f) and (h)/817.97(f) and (h) likewise provide for the enhancement of wildlife values and wetland preservation and restoration. Therefore, the proposed revision is no less effective than the Federal regulations. The Director approves all revisions to ARM 26.4.825.

V. ARM 26.4.924(15), Disposal of Underground Development Waste: General Requirements, and ARM 26.4.927(3)(a), Disposal of Underground Development Waste: Durable Rock Fills

Montana proposed to revise ARM 26.4.927(3)(a) by requiring that the design of a durable rock fill include an internal drainage system ''in accordance with ARM 26.4.924(14) or (15).'' ARM 26.4.924(14), later recodified as (15), would allow for an alternative underdrain system. This is not allowed in the Federal counterparts at 30 CFR 816.71(f)(3)/817.71(f)(3), 816.73/817.73, 816.83(a)(3)/817.83(a)(3), and 816.102(e)/817.102(e).

In OSM's July 10, 1997, issue letter, we informed Montana that the cross-reference to ARM 26.4.924(14) would need to be deleted in order for ARM 26.4.927(3)(a) to be no less effective than the Federal regulations (Administrative Record No. MT–12–20). OSM reminded Montana that this provision was never part of the approved program. OSM told Montana in the August 19, 1992, **Federal Register** (57 FR 37436), when the provision was first proposed, that it could not approve ARM 26.4.924(14), subsequently (15). OSM codified at 30 CFR 926.16(e)(9) the requirement that Montana remove the provision at ARM 26.4.924(14) from its program.

By letter dated May 15, 2001, Montana submitted wording to OSM which deleted the provision at ARM 26.4.924(15) and cross-reference to it at ARM 26.4.927(3)(a) (Administrative Record. No. MT–12–25). This deletion satisfies part of the requirement at 30 CFR 926.16(e)(9) and makes the Montana rules no less effective than the Federal regulations. The Director approves the revision but does not remove the required program amendment at 30 CFR 926.16(e)(9), as not all the requirements of (e)(9) have been met.

W. ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19), and (21), Disposal of Underground Development Waste: General Requirements

a. Definition of ''Waste Disposal Structure'' and Disposal of Underground Development Waste and Coal Processing Waste: Location Relative to Mine Excavations

OSM placed a required program amendment (30 CFR 926.16(e)(5)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to specify whether the waste disposal governed by ARM 26.4.924 and 26.4.932 was within or outside mine surface excavations, and to clarify what constituted a ''waste disposal structure.'' OSM placed the required program amendment on the Montana program due to the June 19, 1990, proposed revisions (Administrative Record No. MT–7–01) to ARM 26.4.924 and 26.4.932 which were not specifically directed either to disposal within mine surface excavations or to disposal outside mine excavations. OSM noted that the performance standards were the same for both, except for the required static safety factor.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a definition of ''waste disposal structure'' at ARM 26.4.301(134) which stated that waste disposal structures are either composed of underground development waste or coal processing waste located outside of the mine workings and the surface area, and are other than impoundments or embankments. At ARM 26.4.924(3), Montana proposed similar wording to the general requirements for the disposal of underground development waste to clarify that underground development waste may not be placed in impoundments or embankments, to clarify the performance standards for the reclamation of waste disposal areas—including those relating to location, and to clarify that the disposal of underground waste into the spoils backfill of excavation areas must be in accordance with sections 3 and 20 of ARM 26.4.924.

Montana's revisions and clarification of the definition of a ''waste disposal structure,'' as well as the general requirements for the disposal of underground development waste, how they relate to the location of mine excavations, and which performance standards apply, assure that the program meets the Federal counterpart at 30 CFR 816.81/817.81 through 816.84/817.84. The Director finds the Montana rules to be no less effective than the counterpart Federal regulations and approves the revisions. The Director removes the required program amendment at 30 CFR 926.16(e)(5).

b. Disposal of Underground Development Waste: Requirements of the Mine Safety and Health Administration (MSHA)

OSM placed a required program amendment (30 CFR 926.16(e)(6)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436; Administrative Record No. MT–7–27) to amend ARM 26.4.924(4) to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and 77.215, and to clarify what

constitutes a ''coal waste refuse structure.''

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana deleted the undefined term ''coal waste disposal structure'' and revised ARM 26.4.924(4)(b) to require that ''waste disposal structures'' must meet the requirements of 30 CFR 77.214 and 77.215. With this revision, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(6).

c. Disposal of Underground Development Waste, General Requirements: Covering With Non-Toxic Material

OSM placed a required program amendment (30 CFR 926.16(e)(7)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to incorporate a requirement no less effective than 30 CFR 816.83(c)(4)/817.83(c)(4) which concerns the covering of refuse piles with non-toxic materials.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed new language at ARM 26.4.924(9) which requires that waste disposal structures be covered with four feet of non-toxic and non-combustible material following final grading. With this revision, the Director finds that Montana's requirements are no less effective than the Federal requirements at 30 CFR 816.83(c)(4)/817.83(c)(4) and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(7).

X. ARM 26.4.930(3), Placement and Disposal of Coal Processing Waste: Special Application and Requirements

OSM placed a required program amendment (30 CFR 926.16(e)(8)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to add application requirements to ARM 26.4.930 which are no less effective than 30 CFR 780.25(e) and (f)/784.16(e) and (f). OSM placed the required program amendment on the Montana program due to the absence of requirements that specify detailed application and design requirements for coal processing waste impoundments. Specifically, the construction of impoundments from coal processing waste behind embankments constructed of other materials was not prohibited in the Montana program.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana rectified this omission by cross-referencing the requirements at ARM 26.4.505(5) which in turn cross-reference the requirements at ARM 26.4.603, 26.4.639, and 26.4.642. ARM 26.4.505(6) prohibits the retention of coal waste impoundments as part of the post-mining land use. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(8).

Y. ARM 26.4.932(5)(b), Disposal of Coal Processing Waste

At ARM 26.4.932(5)(b), Montana proposed to delete the statements that: (1) Inspections may terminate when the coal processing waste has been graded; (2) the provisions of subsection (9) have been met (which primarily concern cover with a minimum of four feet of non-toxic and non-combustible material); and (3) the soil has been distributed in accordance with the soil redistribution and stockpiling provisions at ARM 26.4.702. In the place of this statement, Montana has added a provision that inspections would be made in accordance with the critical construction schedule contained in ARM 26.4.924(19)(b). ARM 26.4.924(19)(b) requires that inspections be made at least quarterly and during critical construction periods, which include the following: (1) Foundation preparation; (2) underdrains and protective filter systems; (3) installation of final surface drainage systems; and (4) final grading and revegetation.

The Federal counterpart regulation concerning the inspection of coal mine waste at 30 CFR 816.83(d)/817.83(d) includes, in addition to the Montana provisions listed above, the requirements that inspections are conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, there are more frequent inspections if a danger or harm exists to the public health and safety, a certified report made by the qualified, registered professional engineer to the regulatory authority promptly after each inspection, color photographs in the certified report of the drainage system and protective filters taken during and after construction but before coal mine waste covers the underdrains, and a copy of the report to be maintained at the minesite. These Federal requirements for the inspection of coal mine waste (30 CFR 816.83(d) and (d)(2) through (d)(4)/817.83(d) and (d)(2) through (d)(4)) are included in the Montana program at ARM 26.4.924(a), (c), (d), (e) and (f). However, Montana has only cross-referenced ARM 26.4.924(b).

Therefore, Montana needs to revise the cross-reference at ARM 26.4.932(5)(b) to read ''ARM 26.4.924'' in general, in order to be no less effective than the Federal counterpart regulations. Therefore, the Director defers on the approval of ARM 26.4.932(5)(b) at this time until Montana revises the cross-reference to read ''ARM 26.4.924.''

Z. ARM 26.4.1014, Test Pits

At ARM 26.4.1014, Montana proposed additional requirements for prospecting test pits. If the coal from a test pit is sold directly to, or commercially used directly by, the intended end user, or, if the coal is sold through a broker or agent, proposed ARM 26.4.1014(2)(c) required that a test pit permit application contain the information specified at proposed ARM 26.4.1014(2)(c)(i) through (iii).

The Federal regulations at 30 CFR 772.14 also provide for such use of coal from exploration operations. However, the Federal regulations at 30 CFR 772.14(b) require prior written approval by the regulatory authority that such sale or commercial use is for testing purposes, otherwise a permit to mine must be obtained.

Proposed ARM 26.4.1014 does not specifically require prior written approval from the State prior to use of the coal in this manner. OSM requested an interpretation from Montana that, because the ARM provisions in subchapter 4 are applicable to test pit permits, Montana's program provides for specific written approval prior to such use of coal obtained from prospecting test pits at ARM 26.4.1014 (Administrative Record No. MT–12–16). There is no specific reference to subchapter 4 for such an approval at ARM 26.4.1014.

For whatever reason, Montana did not respond to OSM with an interpretation that written approval from the State is required prior to sale or commercial use of coal from test pits for testing purposes, in the response dated February 6, 1996 (Administrative Record No. MT–12–19). In the absence of such an interpretation, and because the revision is otherwise no less effective than the Federal regulations, the Director approves ARM 26.4.1014 with the interpretation that Montana's program provides for specific written approval prior to the use of coal obtained from prospecting test pits.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment by letters dated February 8, 1995, and March 1, 1995 (Administrative Record Nos. MT–12–03 and MT–12–08). The Northern Plains Resource Council (NPRC) responded on April 14, 1995, with comments on the proposed revisions (Administrative Record No. MT–12–15) as follows:

1. ARM 26.4.304(6)(b)(ii)(A)

The NPRC had concerns that Montana omitted iron and manganese from testing in this subsection. OSM addressed similar issues at Finding No. 5 above.

2. ARM 26.4.501A(3)(a)

The NPRC commented that the change from two to four spoil ridges would result in a standard variance which would not promote reclamation as contemporaneously as possible and could result in adverse impacts. While OSM's regulation at 30 CFR 816.101(a)(2)/817.101(a)(2) is suspended indefinitely, OSM has had a four spoil ridge requirement off and on since 1979. We have no basis for finding that requiring regrading within four spoil ridges is not as contemporaneous as practicable. OSM finds Montana's rules to be no less effective than the Federal provisions at 30 CFR 816.100/817.100.

3. ARM 26.4.519A

The NPRC commented that revisions made to this section would ''eliminate all highwalls, with certain very limited exceptions * * *'' OSM believes that the NPRC intended to state ''delete the requirement to eliminate all highwalls.'' OSM also read Montana's revision as deleting a requirement to eliminate all highwalls and depressions with spoil and suitable waste materials, as well as the allowable exemption from that requirement, and to require that the operator demonstrate that the volume of spoil and suitable waste materials is more than sufficient to restore the disturbed area to approximate original contour (AOC). Montana explained in its February 6, 1996, letter (Administrative Record No. MT–12–19) that this revision was made to eliminate a redundancy with ARM 26.4.501A(1). However, since that time, Montana has eliminated ARM 26.4.501A(1) from its regulatory program. In the near future, Montana will submit its current regulatory program to OSM for evaluation of all revised rules, including the requirement to eliminate all highwalls and depressions with spoil and suitable waste materials. At this time, OSM is deferring on the proposed revision at ARM 26.4.519A.

The NPRC had concerns with ARM 26.4.515(2) and wondered if those rules were approved by OSM. OSM responds that approval of ARM 26.4.515(2) was deferred by OSM in the May 11, 1990, **Federal Register** notice (55 FR 19727; Administrative Record No. MT–5–48). A deferral means that a provision is unenforceable until Montana and OSM resolve the issues related to the rulemaking. Montana has since developed guidelines concerning approximate original contour and post-mining topography which it believes will address OSM's concerns with ARM 26.4.515(2). Those guidelines will be submitted in the near future to OSM.

4. ARM 26.4.623(2)(a)(iii)

Although the NPRC listed ARM 623.4.623(2)(a)(iii) as the rule in question, OSM believes that ARM 26.4.623(2)(a)(iii) is the correct cite. The NPRC objects to the change from a daily blasting period with a maximum of four hours per day to a maximum of eight hours per day. At the same time, the NPRC acknowledges that Montana has the right to impose more restrictive blasting conditions by the authority given to the States at 30 CFR 816.64(a)(2)/817.64(a)(2). Because Montana is complying with its responsibilities of 30 CFR 816.64(a)(2)/817.64(a)(2), OSM suggests that the NPRC address any on-the-ground concerns with blasting schedules to Montana.

5. ARM 26.4.639(10)

The NPRC expressed concerns that the proposed revisions to this subsection would result in a lack of safety standards. OSM addressed similar concerns at finding no. 14a and b above concerning a single emergency spillway and the containment of a 25-year, 24 hour storm event.

6. ARM 26.4.721

The NPRC appeared to be concerned with Montana's elimination of its nine inches or greater, rill and gulley standard for regraded and resoiled lands. OSM points out that the Federal counterpart at 30 CFR 816.95/817.95 does not use a depth criteria to determine eradication standards. Rather the Federal rules determine the need to eradicate rills and gullies based on their impact to postmining land use or the reestablishment of vegetative cover, or the impact to water quality standards for receiving streams. Montana has proposed rules with similar language which are no less effective than the Federal regulations.

7. ARM 26.4.1001 and 26.4.1001A

The NPRC expressed concerns that without a definition of ''substantially disturb,'' Montana would not be able to interpret its regulations at ARM 26.4.1001 and 1001A. Subsequent to the NPRC's letter dated April 14, 1995, ARM 26.4.1001 and 26.4.1001A were removed from this submittal, revised and approved in SPATS No. MT–018–FOR, **Federal Register** notice dated January 22, 1999 (64 FR 3611). Montana submitted a definition of ''substantially disturb'' at ARM 26.4.301(114) which was also approved at that time.

8. ARM 26.4.321

The NPRC objected to Montana's use of general cross-references, in particular subsection (g), stating that the response is not specific enough. In support, the NPRC cites the corresponding Federal rules at 30 CFR 780.37(a)/784.24(a) and their specific references ''down to section and subsection.'' However, the Federal regulation at 30 CFR 780.37(a)/784.24(a) requires that the State ''Describe the plans to remove and reclaim each road that would not be retained * * *'' Therefore, when Montana lists subchapters 5, 6, 7, and 8 of ARM, Montana is listing the pertinent subchapters which have road-specific reclamation information which is required at 30 CFR 780.37(a)/784.24(a). OSM believes that Montana is complying with the Federal regulations and its rules are no less effective than the Federal regulations.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program by letters dated February 8, 1995; March 1, 1995; and May 23, 2001 (Administrative Record Nos. MT–12–03, MT–12–08 and MT–12–27).

Four agencies responded that they had no comments: the U.S. Army Corps of Engineers (March 2 and March 20, 1995, letters; Administrative Record Nos. MT–12–09 and MT–12–14), the Bureau of Mines (March 17, 1995, letter; Administrative Record No. MT–12–13), the Mine Safety and Health Administration (March 9, 1995 and June 11, 2001, letters; Administrative Record Nos. MT–12–11 and MT–12–30); and the Bureau of Indian Affairs (June 11, 2001, letter; Administrative Record No. MT–12–29).

The Natural Resources Conservation Service (NRCS) responded on March 8,

1995, with comments on the approved Montana program but had no comments on the proposed revisions (Administrative Record No. MT–12–10). The NRCS had the following comments concerning Montana's already approved program:

1. Reference to Soil Conservation Service (SCS)

The NRCS commented that Montana needed to change the reference from the former SCS to the current NRCS, specifically at ARM 26.4.724(3)(a) and 26.4.825(1)(b). OSM is aware that Montana has already made the requested change to those sections in its 1999 revised rules—which will be submitted to OSM in the near future.

2. ARM 26.4.304(9)(b)

The NRCS suggested that ''current condition and trend'' be revised to read ''current ecological condition and trend.'' The requested information at ARM 26.4.304(9)(b) comprises aspects of the vegetative community which Montana has decided are necessary to the permit application. These descriptions are State guidelines, as allowed at 30 CFR 779.19(a)/783.19(a) and not Federal requirements. Therefore, OSM cannot require Montana to incorporate the term ''ecological.'' OSM can, however, send the comment to Montana for consideration when, at such future date, the program is amended.

3. ARM 26.4.304(11)

The NRCS suggested that the soil survey be done at the first order level of detail, which would be consistent with the map scale of one inch equals 400 feet at ARM 26.4.304(11). Both the Federal regulations and Montana's program specify that a soil survey be conducted in accordance with the standards of the National Cooperative Soil Survey. As the scale specified, one inch equals 400 feet, is consistent with a soil survey of the first order, Montana is performing a soil survey to the specifications requested by the NRCS.

4. ARM 26.4.726(2)

The NRCS suggested that the 51 percent native species required by Montana be changed to 75 percent native species, which is required by the NRCS. The counterpart Federal regulations at 30 CFR 816.111(a)(2)/817.111(a)(2) do not specify a certain percentage of native species, but only that native species be used. OSM cannot require Montana to adopt a programmatic requirement which is more stringent than the Federal regulations.

5. ARM 26.4.825(c)(iv)

The NRCS suggested that the reference to the ''Land Capability Guide for Montana, U.S. Soil Conservation Service, September 1, 1982'' be replaced with a reference to an updated NRCS guide, the ''current Field Office Technical Guide (FOTG) for Natural Resources Conservation Service.'' However, there is no Federal counterpart to these rules. Therefore, there is no Federal standard to measure the Montana rule by. OSM cannot require the States to revise their programs when there is no Federal counterpart.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). As this amendment did not relate to air or water quality standards adopted under the authority of the Clean Air Act or the Clean Water Act, OSM requested comments on the amendment from EPA (Administrative Record No. MT–12–04). EPA responded on February 23, 1995, that it had no comments on Montana's amendment (Administrative Record No. MT–12–06).

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 8, 1995, we requested comments on Montana's amendment (Administrative Record No. MT–12–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with certain exceptions, the amendment sent to us by Montana on February 1 and 28, 1995, and further clarified by letter dated February 6, 1996.

We approve, as discussed in: finding no. 1, ARM 26.4.301(79) through (119), (121) through (133), and (135) through (137), concerning definitions; ARM 26.4.407(1) and (2), concerning conditions of permit; ARM 26.4.601(7), concerning general requirements for road and railroad loop construction; ARM 26.4.639(18)(c), concerning sedimentation ponds and other treatment facilities; ARM 26.4.711(2) through (5), concerning establishment of vegetation; ARM 26.4.924(5), (10) through (14), (16), (17), (18), and (20), concerning disposal of underground development waste: general requirements; ARM 26.4.1005(2), concerning drill holes; ARM 26.4.1006(1), concerning roads and other transportation facilities; ARM 26.4.1007(2), concerning grading, soil salvage, storage, and redistribution; and ARM 26.4.1009(1), concerning diversions; finding no. 2, ARM 26.4.308(2), concerning operations plan; ARM 26.4.314(3), concerning plan for protection of the hydrologic balance; ARM 26.4.405(6) and (8), concerning findings and notice of decision; ARM 26.4.501A(3)(a), concerning final grading requirements; ARM 26.4.524(2), concerning signs and markers; ARM 26.4.601(5), concerning general requirements for road and railroad loop construction; ARM 26.4.602(2), concerning location of roads and railroad loops; ARM 26.4.603(9) and Introduction, concerning embankments; ARM 26.4.605(3)(a)(i), concerning hydrologic impact of roads and railroad loops; ARM 26.4.623(2)(b)(iii), concerning blasting schedule; ARM 26.4.633(2), concerning water quality performance standards; ARM 26.4.634(1) and (2), concerning reclamation of drainages; ARM 26.4.638(2)(a), concerning sediment control structures; ARM 26.4.639(1), (10)(c) and (18), Introduction, concerning sedimentation ponds and other treatment facilities; ARM 26.4.642(5) and (8), concerning permanent and temporary impoundments; ARM 26.4.702(4), concerning redistribution and stockpiling of soil; ARM 26.4.711(6), concerning establishment of vegetation; ARM 26.4.927(2)(c), concerning disposal of underground development waste: durable rock fills; ARM 26.4.932(8)(a)(ii), concerning disposal of coal processing waste; ARM 26.4.1002(1) and (2), concerning information and monthly reports; ARM 26.4.1005(3), concerning drill holes; ARM 26.4.1006(2) through (4), concerning roads and other transportation facilities; ARM 26.4.1007(1), concerning grading, soil salvage, storage, and redistribution; ARM 26.4.1009(2), concerning diversions; ARM 26.4.1011(1), concerning hydrologic balance; ARM 26.4.1116(7)(c), concerning bonding: criteria and schedule for release of bond; ARM 26.4.1116A(1) and (2), concerning reassertion of jurisdiction; ARM 26.4.1141(3), concerning designation of lands unsuitable: definition; ARM 26.4.1212(1),

concerning point system for civil penalties and waivers; finding no. 4, ARM 26.4.301(120), the definition of ''test pit;'' finding no. 5, ARM 26.4.304(5), (6)(a)(ii) and (6)(b)(ii)(B), concerning baseline: information: environmental resources; finding no. 6, ARM 26.4.314(5), concerning protection of the hydrologic balance; finding no. 7, ARM 26.4.321(1) and (3), concerning transportation facilities plan; finding no. 8, ARM 26.4.404(5)(b), concerning review of application; finding no. 9, ARM 26.4.405(6)(l), concerning findings and notice of decision; finding no. 10, ARM 26.4.407(4), concerning conditions of permit; finding no. 11, ARM 26.4.505(4) through (8), concerning burial and treatment of waste materials and disposal of off-site generated waste and fly ash; finding no. 13, ARM 26.4.603(9) and 26.4.639(18)(b), concerning sedimentation ponds and other treatment facilities: construction of sedimentation ponds that meet the criteria of 30 CFR 77.216A; finding no. 14, ARM 26.4.639(10)(b) and (19), concerning the construction of sedimentation ponds; finding no. 17, ARM 26.4.721(1) through (3), concerning eradication of rills and gullies; finding no. 18, ARM 26.4.724(6), concerning the use of revegetation comparison standards; finding no. 19, ARM 26.4.726(2) and (3), concerning vegetation production, cover, diversity, density and utility requirements; finding no. 20, ARM 26.4.821(1)(g), concerning alternate reclamation: submission of plan; finding no. 21, ARM 26.4.825(4)(a) and (c) and (6), concerning alternate reclamation: alternate revegetation; finding no. 22, ARM 26.4.924(15) and 26.4.927(3)(a), concerning the disposal of underground development waste; finding no. 23, ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19) and (21), concerning the definition of ''waste disposal structure'' and the disposal of underground development waste: general requirements; finding no. 24, ARM 26.4.930(3), concerning placement and disposal of coal processing waste: special application and requirements; and finding no. 26, ARM 26.4.1014, concerning test pits.

We defer on, as discussed in finding no. 3, ARM 26.4.301(78); 26.4.303, Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); ARM 26.4.405(5); 26.4.405A; 26.4.405B; and ARM 26.4.1206(1), concerning ownership and control; finding no. 12, ARM 26.4.519A, concerning thick overburden and excess spoil; finding no. 16, ARM 26.4.645(6) and 26.4.646(6), concerning groundwater and surface water monitoring; and finding no. 25, ARM 26.4.932(5)(b), concerning the disposal of coal processing waste.

We already approved, as discussed in finding no. 15, ARM 26.4.639(22), concerning the removal of sedimentation ponds and other treatment facilities, in the May 11, 1990, **Federal Register** notice (55 FR 19727; SPATS No. MT–001–FOR and MT–002–FOR).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Montana program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Montana program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only the approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implication. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulation surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 1 and 28, 1995	February 12, 2002	ARM 26.4.301(79) through (137); 26.4.304(5) and (6); 26.4.308(2); 26.4.314(3) and (5); 26.4.321(1) and (3); 26.4.404(5); 26.4.405(6) and (8); 26.4.407(1), (2) and (4); 26.4.501A(3); 26.4.505(4) through (8); 26.4.524(2); 26.4.601(5) and (7); 26.4.602(2); 26.4.603(9) and Introduction; 26.4.605(3); 26.4.623(2); 26.4.633(2); 26.4.634(1) and (2); 26.4.638(2); 26.4.639(1), (10), (18) and (19); 26.4.642(5) and (8); 26.4.702(4); 26.4.711(2) through(6); 26.4.721(1) through (3); 26.4.724(6); 26.4.726(2) and (3); 26.4.821(1); 26.4.825(4) and (6); 26.4.924(3) through (5), (8) through (21); 26.4.927(2) and (3); 26.4.930(3); 26.4.932(8); 26.4.1002(1) and (2); 26.4.1005(2) and (3); 26.4.1006(1) through (4); 26.4.1007(1) and (2); 26.4.1009(1) and (2); 26.4.1011(1); 26.4.1014; 26.4.1116(7); 26.4.1116A(1) and (2); 26.4.1141(3); and 26.4.1212(1) are approved. ARM 26.4.301(78); 26.3.303, Introduction, (1), (6) through (8), (13) through (15), and (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B, 26.4.519A; 26.4.645(6); 26.4.646(6); 26.4.932(5)(b) and 26.4.1206(1) are deferred.

§ 926.16 [Amended]

3. Section 926.16 is amended by removing and reserving paragraphs (b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), and (e)(8).

[FR Doc. 02–3339 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA59]

Enrollment of Certain Family Members of E–4 and Below Into TRICARE Prime

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule provides for the enrollment of certain family members of E–4 and below in TRICARE Prime. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager, or to refuse enrollment into TRICARE Prime. This enrollment may be terminated at any time and these family members may re-enroll at any time.

EFFECTIVE DATE: February 12, 2002.

ADDRESSES: TRICARE Management Activity (TMA), Program Operations Directorate, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Mr. Duaine Goodno, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–0039.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/ CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This final rule implements section 712 of the National Defense Authorization Act for Fiscal Year 1999 which modified chapter 55 of title 10, United States Code by adding a new section 1097a which provides for automatic TRICARE Prime enrollment for active duty families of E–4 and below in certain circumstances. Owing to the small number of family members of E–4 and below who are not already enrolled in TRICARE Prime, and the nature of TRICARE Prime enrollment, the Department will send an enrollment letter to all sponsors with non-enrolled family members. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager, or to refuse enrollment into TRICARE Prime. The choice of whether to remain enrolled in TRICARE Prime, or to decline enrollment to participate in TRICARE Extra or Standard remains completely voluntary. They may also re-enroll at any time. The one year lock-out provision for early disenrollment will not apply to any family member of E–4 and below regardless of how or when they were enrolled.

Beneficiaries who are enrolled into TRICARE Prime will receive official notification of their enrollment in writing such as a letter with beneficiary card. For those who remain eligible for TRICARE Prime enrollment, the sponsor will be sent a written notification of the pending expiration and renewal of the TRICARE Prime enrollment. TRICARE Prime enrollments shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined by the sponsor.

II. Review of Comments

The interim final rule was published in the **Federal Register** on June 28, 2000 (65 FR 39804). We received one comment from a beneficiary group who felt that the intent of the program reflects a paternalistic attitude indicating junior enlisted family members lack the capacity to make a selection of health care benefits that is in their best interest. They contend that proper education concerning the TRICARE benefit would be a more effective method to assure beneficiaries that they have made a proper selection of health care services. They also recommend that we design a mechanism whereby the beneficiary acknowledges enrollment in the program such as an enrollment form as is required today. They are particularly concerned with the transient nature of the military community and the potential of forcing families into high Point of Service charges.

Response: Based on the above comments, the Department will focus on marketing this program to this beneficiary population. An enrollment form will continue to be required of these beneficiaries which will document the fact that they accept the TRICARE Prime rules and it will allow them to provide their primary care manager preferences.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of Executive Order 12866.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

This rule is being issued as a final rule.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.17 is amended by revising paragraphs (b)(3), (c)(2)(i), (n)(1) and (o)(4) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(b) * * *

(3) *Automatic enrollment of certain dependents:* Under 10 U.S.C. 1097a, in the case of dependents of active duty members in the grade of E–1 to E–4, such dependents who reside in a catchment area of a military treatment facility shall be enrolled in TRICARE Prime consistent with procedures established under paragraph (o)(7) of this section. The enrollment of a dependent of the member may be terminated by the member, dependent or other responsible individual at any time.

(c) * * *

(2) * * *

(i) Dependents of active duty members are eligible to enroll in Prime. After all active duty members are enrolled, those dependents of active duty members in the grade of E–1 to E–4 will have second priority and all other dependents of active duty members will have third priority.

* * * * *

(n) * * *

(1) *Primary care manager.* (i) All active duty members and Prime enrollees will be assigned or allowed to select a primary care manager pursuant to a system established by the MTF Commander or other authorized official, and consistent with the access standards in paragraph (p)(5)(i) of this section. The primary care manager may be an individual, physician, a group practice, a clinic, a treatment site, or other designation. The primary care manager may be part of the MTF or the Prime civilian provider network. The enrollee will be given the opportunity to register a preference for primary care manager from a list of choices provided by the MTF Commander. This preference will be entered on a TRICARE Prime enrollment form or similar document. Preference requests will be honored subject to availability, under the MTF beneficiary category priority system and other operational requirements established by the commander and other authorized person. MTF PCM nonavailability may be a condition of assignment to a civilian provider network PCM.

(ii) Prime enrollees who are dependents of active duty members in pay grades E–1 through E–4 shall have priority over other active duty dependents for enrollment with MTF PCMs, subject to MTF capacity.

* * * * *

(o) * * *

(4) *Voluntary disenrollment.* Any non-active duty beneficiary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs). Beneficiaries who disenroll prior to their annual enrollment renewal date will not be eligible to reenroll in Prime for a one-year period from the effective date of the disenrollment. This one-year exclusion may be waived by the Assistant Secretary of Defense (Health Affairs) based on extraordinary circumstances. This one-year period does not apply to any dependent whose sponsor is in the grade of E–1 to E–4.

* * * * *

Dated: January 31, 2002.

L.M. Bynum,

Alternate Federal Register Notice Liaison Officer, Department of Defense.

[FR Doc. 02–2767 Filed 2–11–02; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0313; FRL–7137–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 20, 2001, and concern recordkeeping provisions and volatile organic compound (VOC) emissions from spray coating operations, metal parts and products coating operations, coating and ink manufacturing, surfactant manufacturing, and polyester resin operations. We are approving local rules that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on March 14, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4115.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On September 20, 2001 (66 FR 48399), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	109.0	Record Keeping for Volatile Organic Compound Emissions	08/18/00	3/14/01
SCAQMD	481.0	Spray Coating Operations	11/17/00	3/14/01
SCAQMD	1107.0	Coating of Metal Parts & Products	11/17/00	3/14/01
SCAQMD	1141.1	Coating and Ink Manufacturing	11/17/00	3/14/01
SCAQMD	1141.2	Surfactant Manufacturing	11/17/00	3/14/01
SCAQMD	1162.0	Polyester Resin Operations	11/17/00	3/14/01

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the SCAQMD correcting the adoption date for Rule 109. Consequently, we have published the correct date within this notice at the table above.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative 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 32111, ''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. section 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 April 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 6, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(286) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) March 14, 2001.

(i) Incorporation by reference.

(A) South Coast AQMD.

(*1*) Rule 109 amended on August 18, 2000, Rule 481 amended on November 17, 2000, Rule 1107 amended on November 17, 2000, Rule 1141.1 amended on November 17, 2000, Rule 1141.2 amended on November 17, 2000, and Rule 1162 amended on November 17, 2000.

* * * * *

[FR Doc. 02–3190 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214a; FRL–7141–9]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area) includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. In a **Federal Register** notice published June 19, 2000, the Cincinnati-Hamilton area was redesignated to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) effective July 5, 2000. On September 11, 2001, the United States Court of Appeals for the 6th Circuit vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). Therefore, in response to the Court's findings, this rulemaking action reinstates EPA's redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the effective date of the original redesignation action. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

DATES: This direct final rule is effective April 15, 2002, without further notice, unless EPA receives adverse comment by March 14, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Gregory, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the Cabinet's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Scientist, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–9116, (*gregory.ray@epa.gov*).

SUPPLEMENTARY INFORMATION:

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I. What action are we taking?
II. What is the background for this action?
III. Why are we taking this action?
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I. What Action Are We Taking?

In this direct final rulemaking, EPA is reinstating the redesignation to attainment for the Kentucky portion of the Cincinnati-Hamilton area for the 1-hour ozone NAAQS. The Cincinnati-Hamilton area, which includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton; was redesignated to attainment for the 1-hour ozone NAAQS (65 FR 37879, June 19, 2000), effective July 5, 2000.

EPA is taking this action in response to the Court decision in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) which vacated EPA's redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion. The Court in *Wall* v. *EPA* considered a number of challenges to EPA's redesignation action, but upheld EPA's redesignation action in all respects with regard to the Kentucky portion of the Cincinnati-Hamilton area. The Court also concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, all counties in the Cincinnati-Hamilton area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Ohio Counties of Butler, Clermont, Hamilton, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, due to monitored violations of the 1-hour ozone NAAQS that occurred during the 1987–1989 time frame.

For the 1996–1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) and the State of Ohio Environmental Protection Agency (OEPA) submitted separate requests to redesignate the Kentucky and Ohio portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS. On October 28, 1999, the Cabinet submitted a prehearing redesignation request and requested that EPA parallel process this submittal. The Cabinet submitted the final redesignation request, including public hearing results, on December 13, 1999. On July 2, 1999, EPA received a proposed redesignation request from OEPA. OEPA submitted additional supporting information on August 16, 1999, and completed the submittal by providing public hearing results on December 22, 1999.

On January 24, 2000 (65 FR 3630) EPA proposed approval of the above requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides requirements as provided for in section 182(f) of the CAA. After taking and considering comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS. This rulemaking also approved the Cabinet's and OEPA's redesignation requests, including their plans for maintaining the 1-hour ozone NAAQS.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the Court for review of EPA's redesignation of the Cincinnati-Hamilton area. The petitioners urged the Court to find that EPA erred in a number of respects, but the Court upheld EPA's actions with respect to all requirements for redesignation that relate to Kentucky. The Court also rejected all of the petitioners' challenges with respect to the Ohio portion of the Cincinnati-Hamilton area, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of part D, subpart 2. Specifically, the Court rejected challenges to, and upheld EPA's approvals of, the Kentucky and Ohio maintenance plans and EPA's conclusions with respect to transportation conformity requirements. The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the RACT rules of part D, subpart 2 before being redesignated. The Court vacated ''EPA's action in redesignating Cincinnati-Hamilton area to attainment status for ground level ozone'' and ''remanded for further proceedings consistent with this opinion.''

III. Why Are We Taking This Action?

In response to the Court's vacatur and remand, EPA believes that it is consistent with the Court's opinion to reinstate the redesignation of the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the original effective date of this redesignation action. The grounds for reinstatement are as follows: (1) EPA has issued a final redesignation action for the Kentucky portion of the area, after notice and comment rulemaking; (2) the Court, after reviewing EPA's actions, has upheld EPA's determination of attainment for the entire Cincinnati-Hamilton area (both the Ohio and Kentucky portions), EPA's approval of the maintenance plans for both the Kentucky and Ohio portions of the area, and EPA's action approving Kentucky's request for redesignation of the Kentucky portion of the Cincinnati-Hamilton area. Thus, both EPA and the Court concur that Kentucky has fully met the requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area, the entire area was determined to be in attainment for the 1-hour ozone NAAQS, and both portions of the area have fully-approved maintenance plans that have withstood challenges after judicial review. The Court left intact all of EPA's determinations with respect to attainment and maintenance for the entire area, as well as all the remaining requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area.

The CAA expressly provides for designation and redesignation of portions of nonattainment areas. See, for example section 107(3)(D): ''The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or *portion thereof* within the State * * *.'' Similarly, section 107(d)(3)(E) provides that: ''The Administrator may not promulgate a redesignation of a nonattainment area (*or portion thereof*) to attainment unless—* * *.''

EPA has in the past approved redesignation requests for a portion of an area in a multi-state nonattainment area that had attained the standard. See, for example, the June 29, 1995, redesignation of the Huntington, West Virginia, portion of the Huntington-Ashland, Kentucky, ozone nonattainment area to attainment and approval of that area's maintenance plan (60 FR 33748).

Under these circumstances, EPA has the authority to redesignate the Kentucky portion of the area, independent of whether Ohio has met all the requirements for a fully approved State Implementation Plan (SIP) for the Ohio portion of the area.

IV. What Is the Effect of This Action?

When it takes effect, the reinstatement of EPA's redesignation for the Kentucky portion of the Cincinnati-Hamilton area will be effective as of the original effective date of EPA's June 19, 2000, redesignation action. Thus, the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318 will continue to read attainment as of July 5, 2000. This direct final rulemaking has no impact on the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton. The attainment status of the Ohio portion of the Cincinnati-Hamilton area is being addressed in a separate rulemaking action.

Other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area and upheld by the Court are unaffected by today's rulemaking. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress or attainment continue to remain inapplicable to the area. Since the NO_X exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO_X requirements for moderate ozone nonattainment areas.

V. Administrative 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 reinstates a previous redesignation to attainment, an action that affects the attainment status of a geographical area. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. 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 rulemaking 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 reinstates a previous action redesignating an area to attainment—an action which affects the attainment status of a geographical area. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action 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 CAA. 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 CAA. The current action merely reinstates a previous action that was taken based on review of a Kentucky SIP submittal that satisfied all CAA provisions. 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. section 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. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2002. 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 81

Air pollution control, National parks, Wilderness areas.

Dated: January 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–3357 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301214; FRL–6821–9]

RIN 2070–AB78

1,2-Ethanediamine, Polymer With Methyl Oxirane and Oxirane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an existing exemption to lower the number average molecular weight to 1,100 for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest. Huntsman Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301214, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301214 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301214. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 7, 2001 (66 FR 56305) (FRL–6807–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E6350) by Huntsman Corporation, 3040 Post Oak Blvd., Houston, TX. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that the existing tolerance exemption listed under 40 CFR 180.1001(c) for 1,2-ethanediamine, polymer with methyl oxirane and oxirane be amended to include a number average molecular weight (MW) of 1,100 for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane, (CAS Reg. No. 26316–40–5).

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined

in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a water absorbing polymer with a number average MW greater than or equal to 10,000 daltons.

Additionally, the polymer, 1,2-ethanediamine, polymer with methyl oxirane and oxirane, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,100 number average MW is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 1,2-ethanediamine, polymer with methyl oxirane and oxirane meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 1,2-ethanediamine, polymer with methyl oxirane and oxirane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 1,2-ethanediamine, polymer with methyl oxirane and oxirane is 1,100 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 1,2-ethanediamine, polymer with methyl oxirane and oxirane conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not 1,2-ethanediamine, polymer with methyl oxirane and oxirane shares a common mechanism of toxicity with any other chemicals. However, 1,2-ethanediamine, polymer with methyl oxirane and oxirane conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of 1,2-ethanediamine, polymer with methyl oxirane and oxirane, EPA has not used a safety factor analysis to assess the risk. For the same reasons the

additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 1,2-ethanediamine, polymer with methyl oxirane and oxirane is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

In 40 CFR 180.1001(c) there is an existing exemption from the requirement from a tolerance for 1,2-ethanediamine, polymer with methyl oxirane and oxirane (CAS Reg. No. 26316–40–5) minimum number average MW 2,800 and the range of number average MW is 2,800 to 10,000 daltons.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for 1,2-ethanediamine, polymer with methyl oxirane and oxirane nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301214 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301214, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section

408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this 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 Part 180

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

Dated: January 30, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, the table in paragraph (c) is amended by revising the entry for the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
1,2-Ethanediamine, polymer with methyl oxirane and oxirane, 1,100 minimum number average molecular weight (in amu) (CAS Reg. No. 26316–40–5).	.....	Surfactant, dispersing agent
* * *	* * * *	

* * * * *

[FR Doc. 02–3354 Filed 2–11–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301216; FRL–6822–4]

RIN 2070–AB78

Tetraethoxysilane Polymer with Hexamethyldisiloxane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of tetraethoxysilane polymer with hexamethyldisiloxane (CAS Reg. No. 104133–09–7); when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Wacker Silicones Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of tetraethoxysilane polymer with hexamethyldisiloxane.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301216, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301216 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301216. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 1, 2001 (66 FR 55178) (FRL–6807–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 5E4595) by Wacker Silicones, 3301 Sutton Road, Adrian, MI. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of tetraethoxysilane polymer with hexamethyldisiloxane (CAS Reg. No. 104133–09–7).

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

is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. Tetraethoxysilane polymer with hexamethyldisiloxane is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. Tetraethoxysilane polymer with hexamethyldisiloxane does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. Tetraethoxysilane polymer with hexamethyldisiloxane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. Tetraethoxysilane polymer with hexamethyldisiloxane is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. Tetraethoxysilane polymer with hexamethyldisiloxane is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. Tetraethoxysilane polymer with hexamethyldisiloxane is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, tetraethoxysilane polymer with hexamethyldisiloxane, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 6,574–6,695 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, tetraethoxysilane, polymer with hexamethyldisiloxane meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to tetraethoxysilane, polymer with hexamethyldisiloxane.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that tetraethoxysilane, polymer with hexamethyldisiloxane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of tetraethoxysilane, polymer with hexamethyldisiloxane is 6,574–6,695 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since tetraethoxysilane, polymer with hexamethyldisiloxane conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency considers ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not tetraethoxysilane, polymer with hexamethyldisiloxane share a common mechanism of toxicity with any other chemicals. However, tetraethoxysilane, polymer with hexamethyldisiloxane conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of tetraethoxysilane, polymer with hexamethyldisiloxane.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of tetraethoxysilane, polymer with hexamethyldisiloxane, EPA has not used a safety factor analysis to assess the risk. For the same reasons the

additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that tetraethoxysilane, polymer with hexamethyldisiloxane is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are not any existing exemptions from the requirement of a tolerance for tetraethoxysilane, polymer with hexamethyldisiloxane.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for tetraethoxysilane, polymer with hexamethyldisiloxane nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of tetraethoxysilane, polymer with hexamethyldisiloxane from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301216 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301216, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section

408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this 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 Part 180

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

Dated: January 30, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (inamu) (CAS Reg. No. 104133–09–7).	.....	Antifoam agent
* * *	* * * *	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (in amu) (CAS Reg. No. 104133–09–7).	.....	Antifoam agent
* * *	* * * *	

[FR Doc. 02–3355 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301207; FRL–6818–8]

RIN 2070–AB78

Zeta-Cypermethrin and its Inactive R-isomers; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues ofzeta-cypermethrin and its inactive R-isomers in or on edible podded legume vegetables (Crop subgroup 6A) at 0.5 parts per million (ppm); succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop Group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This document also corrects two errors that appeared in the codified text of a final rule issued for zeta-cypermethrin in the **Federal Register** of September 17, 2001. The amendatory language for that document should have included instructions removing the entry for milk and adding an entry for goat, fat, under the table in § 180.418(a)(2). This document corrects those errors.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301207, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301207 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6100; and e-mail address: larocca.george@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and ProposedRules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings athttp://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301207. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 8, 2000 (65 FR 66998) (FRL–6750–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.418 be amended by establishing a tolerance for residues of the insecticide zeta-cypermethrin (-alpha-cyano(3-phenoxyphenyl) methyl (±)(*cis-trans* 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate in or onthe following raw agricultural commodities:

PP 0F06207 proposed tolerances in or on the raw agricultural commodities wheat, grain at 0.15 ppm; wheat forage, at 2.5 ppm; hay at 6.0 ppm; wheat, straw at 6.5 ppm; wheat, bran at 0.20 ppm; sorghum, grain, at 0.50 ppm; sorghum, forage at 0.10 ppm; sorghum fodder at 1.5 ppm; tomatoes at 0.10 ppm; peppers at 0.30 ppm; peas and beans (dried, succulent, and edible podded) at 0.50 ppm; soybeans at 0.05 ppm; poultry, meat at 0.05 ppm; poultry, meat by-products at 0.05 ppm; poultry, fat at 0.05 ppm; eggs at 0.05 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.30 ppm; and milk, fat at 0.2 ppm (reflecting 0.01 ppm in whole milk).

Based on EPA's review, the petition was revised by the petitioner to:Propose tolerances of 0.5 ppm for edible podded legume vegetables (Crop subgroup 6A); propose tolerances of 0.1 ppm for succulent, shelled peas and beans (Crop subgroup 6B); propose tolerances of 0.05 ppm in or on dried, shelled peas and beans, except soybean (Crop subgroup 6C); propose tolerances of 0.05 ppm in or on soybean, seed; propose tolerances of 0.2 ppm in or on the fruiting vegetables, except cucurbits group (Crop group 8); propose tolerances of 0.5 ppm in or on sorghum, grain; propose tolerances of 0.1 ppm in or on sorghum forage; propose tolerances of 5.0 ppm in or on sorghum, stover; propose tolerances of 0.2 ppm in or on wheat, grain; propose tolerances of 3.0 ppm in or on wheat, forage; propose tolerances of 6.0 ppm in or on wheat, hay; propose tolerances of 7.0 ppm in or on wheat straw; propose tolerances of 10.0 ppm in or on aspirated grain fractions; propose tolerances of 0.2 ppm in or on meat of cattle, goats, hogs, horses, and sheep.

Although EPA is requesting a number of changes to the initial petitions and Notice of Filings, the nature of the changes, i.e. clarification and correction of commodity terms, international harmonization of tolerances, reduction in tolerance levels are not considered significant nor do they alter the risk assessment. Therefore, EPA is issuing this as a final action.

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

EPA performs a number of analyses to determine the risks from aggregateexposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of zeta-cypermethrin and its inactive *R*-isomers on edible podded legume vegetables (Crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zeta-cypermethrin and its inactive R-isomers were discussed in detail in the **Federal Register** notice of September 17, 2001 (66 FR 47979) (FRL–6801–1). In that document (Unit III.), the toxicological profile for zeta-cypermethrin and cypermethrin was fully discussed. The observed health effects as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) were presented in tables sorted by the EPA Guideline number for each study type. The presentation of the toxicological profile for zeta-cypermethrin in the September 17, 2001 **Federal Register** remains current and can, therefore, be referenced as background in relation to the tolerances being established with this document.

Zeta-cypermethrin is an enriched isomer of cypermethrin. In order to select toxicity endpoints for the purposes of risk assessment, bridging data on zeta-cypermethrin were submitted so that the toxicity of zeta-cypermethrin could be compared with that of cypermethrin and the data bases could be combined to form one complete data base for both chemicals. In the selection of toxicity endpoints, studies conducted with zeta-cypermethrin were used wherever possible.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes

used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in thevariations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below whichcarcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for zeta-cypermethrin and its inactive R-isomers used for human risk assessment was presented in Table 3 in Unit III.B. of the **Federal Register** of September 17, 2001 (66 FR 47979) (FRL–6801–1). The selected hazard endpoints used in the risk assessment to support the tolerances published on September 17, 2001, remain current. Therefore, the same toxicological dose and hazard endpoints are used in the risk assessment for the tolerances established through this rulemaking. For this reason, the detailed table listing the selected endpoints is not being republished with this final rule. Refer to the September 17, 2001 **Federal Register** cited above to review the hazard endpoints selected for zeta-cypermethrin.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of zeta-cypermethrin and its inactive R-isomers, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from zeta-cypermethrin and its inactive R-isomers in food as follows:

Zeta-cypermethrin is an enriched-enantiomer verson of the insecticide cypermethrin. Both cypermethrin and zeta-cypermethrin are mixtures of eight isomers, with the active components consisting of the S-enantiomers (''S'' configuration at the cyano bearing carbon). The two differ in that cypermethrin has a 50:50 R/S ratio whereas zeta-cypermethrin is enriched in the S-enantiomers with a ratio of 90:10 of the S/R. The enriched isomer formulation provides for similar insect control but at lower use rates. Since use of both cypermethrin and zeta-cypermethrin result in human exposure to the same eight isomers, dietary and non-dietary (residential) aggregate risk assessment was conducted by adding the uses of the two chemicals.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100% crop treated have been used in these analyses for all commodities having either established or proposed tolerances of cypermethrin or zeta-cypermethrin. In cases where a commodity has an established tolerance for cypermethrin and a proposed tolerance for zeta-cypermethrin, the larger of the two values was used in the assessment.DEEM default processing factors were used for all commodities in this assessment. All exposures are Tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure.

TABLE 1.—SUMMARY OF ACUTE DIETARY EXPOSURE, DIETARY EXPOSURE, AND RISK FOR ZETA-CYPERMETHRIN.

Population Subgroup	Acute Dietary	
	Dietary Exposure (mg/kg/day)	%aPAD
U.S. population	0.021818	21.8
Infants (<1 year old)	0.024398	24.4
Children (1-6 years)	0.032668	32.7
Females (13-50 years)	0.020468	20.5

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues and 100% crop treated have been used in these analyses for all commodities having either established or proposed tolerances of

cypermethrin or zeta-cypermethrin. For chronic risk assessments, residue estimates for foods (e.g., apples) or food-forms (e.g., apple juice) of interest are multiplied by the averaged consumption estimate of each food/food-form of each population subgroup. Exposure estimates are expressed in mg/kg bwt/day and as a percent of the cPAD.

TABLE 2.—SUMMARY OF CHRONIC DIETARY EXPOSURE AND RISK FOR ZETA-CYPERMETHRIN

Population Subgroup	Chronic Dietary	
	Dietary Exposures (mg/kg/day)	%cPAD
U.S. population	0.007442	2.4
Infants (<1 year old)	0.006485	10.8
Children (1-6 years)	0.014017	23.4
Females (13-50 years)	0.006513	10.9

As shown by the summarized acute and chronic results in Tables 1 and 2, all risk estimates fall below EPA's level of concern (≥ 100% PAD). All exposures are Tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure. Refinements to the analyses in the form of percent crop treated considerations and/or anticipated residues would likely reduce the exposure and risk estimates for zeta-cypermethrin.

iii. *Cancer*. Cypermethrin has been classified as a Category C, possible human carcinogen, based on an increased incidence of lung adenomas and adenomas plus carcinomas combined in female mice (Cancer Peer Review Committee, 1988). The evidence was not considered strong enough to warrant a quantitative estimation of human risk. Cypermethrin has not been classified under the more current, Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996). Because zeta-cypermethrin is an enriched isomer of cypermethrin, it is also classified as a Category C carcinogen and a RfD approach was recommended for human risk assessment purposes.

2. *Dietary exposure from drinking water*. Based on the available data, cypermethrin/zeta-cypermethrin is a moderately persistent chemical that primarily degrades by photolysis in water and biodegradation. Depending on the environmental circumstances, it may persist for periods of months post-treatment. Cypermethrin is tightly bound to soil particles and is not likely to move to ground waters. However, the degradate dichlorovinyl acid (DCVA) is mobile and likely to reach ground waters. Additional information about the mobility of this degradate has been requested. Cypermethrin can contaminate surface waters through spray drift. Under some conditions it may also have a potential for runoff into surface waters (primarily through erosion), for several months post-application. Since zeta-cypermethrin is preferentially associated to the soils, the fraction of the chemical in the water column should be small. In addition, it is expected that treatment of drinking water would remove substantial portions of cypermethrin/zeta-cypermethrin present in water. Although the Agency has not addressed residues of DCVA in water, the Agency has concluded that DCVA does not need to be included in the dietary risk for food.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or thePesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produceestimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to zeta-cypermethrin and its inactive R-isomers, they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models, the EECs of zeta-cypermethrin and its inactive R-isomers for acute exposures are estimated to be 8.9 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.46 ppb for surface water and 0.006 ppb for ground water. These values generally represent upper-bound estimates of the concentrations that might be found in surface water and ground water due to the use of cypermethrin on Brassica vegetables, which has the highest application rate among both cypermethrin and zeta-cypermethrin on all crops over which the chemicals are applied.

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

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure. However, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide

cypermethrin). The analytical method does not distinguish cypermethrin from zeta-cypermethrin, and the toxicological endpoints are the same. Therefore, dietary and non-dietary residential aggregate risk assessment is conducted by adding the uses of the two chemicals.

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

EPA does not have, at this time, available data to determine whether zeta-cypermethrin and its inactive R-isomers has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zeta-cypermethrin and its inactive R-isomers does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that zeta-cypermethrin and its inactive R-isomers has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and or postnatal exposure to either zeta-cypermethrin or cypermethrin. In the prenatal developmental toxicity studies in rats, there was no evidence of developmental toxicity at the highest does tested (35 mg/kg/day). Maternal toxicity (decreased body weight gain (both chemicals), and food consumption, ataxia, urine and feces-stained for (zeta-cypermethrin) was observed at the LOAEL of 25 mg/kg/day. The maternal NOAELs were established at 12.5 mg/kg/day for zeta-cypermethrin and 17.5 mg/kg/day for cypermethrin. In the definitive rabbit developmental toxicity study conducted with cypermethrin, the maternal LOAEL was 450 mg/kg/day based on decreased body weight gain. No developmental toxicity was observed at dose levels up to 700 mg/kg/day. In the 2-generation reproduction study in rats conducted with zeta-cypermethrin, off-spring toxicity (decreased pup weight gain during lactation) was observed at the same treatment level which resulted in parental systemic toxicity (NOAEL: 27 mg/kg/day; LOAEL: 45 mg/kg/day). In the definitive multigeneration reproduction study conducted with cypermethrin, the parental NOAEL/LOAEL is lower than the pup NOAEL/LOAEL, both based on decreased in body weight gain (2.5/7.5 mg/kg/day for the parents versus 7.5/37.5 mg/kg/day for the pups).

3. *Conclusion.* There is a complete toxicity data base forzeta-cypermethrin and its inactive R-isomers and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The safety factor can be removed for zeta-cypermethrin and its inactive R-isomers because: (1) There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; (2) the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a developmental neurotoxicity study - and a safety factor (e.g., neuropathy in adult animals; central nervous system malformation following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) and therefore does not warrant an FQPA safety factor; and (3) the dietary (food and drinking water) and non-dietary exposure assessment will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food andresidential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to zeta-cypermethrin and its inactive R-isomers will occupy 22% of the aPAD for the U.S. population, 21% of the aPAD for females 13 years and older, 24% of the aPAD for infants (>1 year old), and 33% of the aPAD for children (1-6 years). In addition, there is potential for acute dietaryexposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and

comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)[1]	Ground Water EEC (ppb)[1]	Acute DWLOC (ppb)[2]
U.S. population	0.10	22%	8.9	0.006	2,700
All infants (< 1 year old)	0.10	24%	8.9	0.006	760
Children (1-6 years old)	0.10	33%	8.9	0.006	670
Females (13-50 years old)	0.10	21%	8.9	0.006	2,400

[1] EECs resulting from the maximum proposed application rate (Cypermethrin on brassica vegetables).
[2] The acute DWLOC was calculated as follows: DWLOC (μg/L) = maximum water exposure (mg/kg/day) x body weight (kg) ÷ consumption (L/day) x 0.001 mg/μg

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to zeta-cypermethrin and its inactive R-isomers from food will utilize 12% of the cPAD for the U.S. population, 11% of the cPAD for infants (<1 year old) and 23% of the cPAD for children (1-6 years). There are no residential uses for zeta-cypermethrin and its inactive R-isomers that result in chronic residential exposure to zeta-cypermethrin and its inactive R-isomers. However, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). The analytical method does not distinguish cypermethrin from zeta-cypermethrin, and the toxicological endpoints are the same. Therefore, dietary and non-dietary residential aggregate risk assessment is conducted by adding the use of the two chemicals. Based on the use pattern, chronic residential exposure to residues of zeta-cypermethrin and its inactive R-isomers is not expected. In addition, there is potential for chronic dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC(NON-CANCER) EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.06	12	0.46	0.006	1,900
All infants (<1year old)	0.06	11	0.46	0.006	540
Children (1-6years old)	0.06	23	0.46	0.006	460
Females 13-50 years old	0.06	11	0.46	0.006	1,600

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

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure; however, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). Cypermethrin registered residential uses constitute short- and intermediate-term exposure scenarios; endpoints have been selected for short- and intermediate-term incidental oral and inhalation exposures, and the acceptable MOEs for short- and intermediate-term exposures are 100. Since the toxicological effects through the inhalation exposure route are similar to those toxicological effects through the oral routes, short-term aggregate risk assessment was conducted adding inhalation, oral non-dietary exposure, and average food and water exposure.

Since all the acceptable MOEs are at the same level, the aggregate risks for population subgroup can be estimated by calculating aggregate Margin of Exposure values ($MOE_{aggregate}$). $MOE_{aggregate} = 1/MOE_I + 1/MOE_D + 1/MOE_O + 1/MOE_{food} + 1/MOE_{water}$ where I = inhalation, D = dermal (no dermal endpoints were selected), O = non-dietary oral, MOE_{food} = average food from the chronic DEEM analysis.

As residue values in water from monitoring data are not available, therefore, as with the acute dietary aggregate risk estimate for the short- and intermediate-term aggregate risk assessments, the DWLOCs have to be back calculated. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,500 for adult males, 1,700 for

adult females, 830 for a child, and 1,700 for infants. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (μg/L)	Ground Water EEC (μg/L)	Short-Term DWLOC (μg/L)
Adult male	1,300	100	0.46	0.006	3,300
Adult female	1,500	100	0.46	0.006	2,800
Child	600	100	0.46	0.006	830
Infants	1,000	100	0.46	0.006	910

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure; however, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). Cypermethrin registered residential uses constitute short- and intermediate-term exposure scenarios; endpoints have been selected for short- and intermediate-term incidental oral and inhalation exposures, and the acceptable MOEs for short- and intermediate-term exposures are 100. Since the toxicological effects through the inhalation exposure route are similar to those toxicological effects through the oral routes, short-term aggregate risk assessment was conducted adding inhalation, oral non-dietary exposure, and average food and water exposure.

Since all the acceptable MOEs are at the same level, the aggregate risks for the population subgroups can be estimated by calculating aggregate Margin of Exposure values ($MOE_{aggregate}$). $MOE_{aggregate} = 1/MOE_I + 1/MOE_D + 1/MOE_O + 1/MOE_{food} + 1/MOE_{water}$.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 640 for adult males, 740 for adult females, 300 for child, and 530 for infants. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	Aggregate MOE (Food +Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC μg/L	Ground Water EEC μg/L	Intermediate-Term DWLOC μg/L
Adult male	640	100	0.46	0.006	1,500
Adult female	740	100	0.46	0.006	1,300
Child	300	100	0.46	0.006	330
Infant	530	100	0.46	0.006	410

5. *Aggregate cancer risk for U.S. population.* Cypermethrin/zeta-cypermethrin has been classified as a Category C carcinogen, based on an increased incidence of lung adenomas and adenomas plus carcinomas combined in female mice. However, the evidence was not considered strong enough to warrant a quantitative estimation of human risk. An RfD approach was recommended for human risk assessment purposes. Dietary risk concerns due to long-term consumption of zeta-cypermethrin are adequately addressed in the chronic exposure analysis. For the U.S. population only 11% of RfD is occupied by chronic food and water exposure.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general

population, and to infants and children from aggregate exposure to zeta-cypermethrin and its inactive R-isomers residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of cypermethrin residues in plants and animal products in PAM II (Method 1). This method involves initial acetone-hexane extraction, followed by partitioning with water. The organic layer is evaporated, then redissolved in cyclohexane-methylene chloride and passed through a gel permeation column. The eluate is evaporated, redissolved in hexane and passed through a Florisil column. Cypermethrin residues are analyzed by gas chromatography (GC) with an electron capture detector (ECD). Since zeta-cypermethrin is an isomer enriched form of cypermethrin and the zeta-cypermethrin is an enriched form of cypermethrin, and the PAM II method is not stereospecific, this method is considered adequate for enforcement of the proposed tolerances of zeta-cypermethrin.

B. International Residue Limits

There are no specific Codex maximum residue limits (MRLs) for zeta-cypermethrin, but there are Codex MRLs for cypermethrin. The proposed or recommended U.S. tolerances for residue zeta-cypermethrin in/on soybean seeds (0.05 ppm), eggs (0.05 ppm), dried shelled peas and beans (0.05 ppm), and meat byproducts (0.05 ppm) are equivalent to their respective Codex MRLs. The recommended U.S. tolerance for fruiting vegetables (0.2 ppm) is also equivalent to the Codex MRL for egg plants, but is lower than Codex MRLs for tomatoes and peppers (0.5 mg/kg). Recommended U.S. tolerances for meat (cattle, goats, hogs, horses, and sheep) and sorghum stover will be increased to 0.2 and 5.0 ppm, respectively to match their equivalent Codex MRLs. The recommended U.S. tolerances for milk and wheat hay and straw are higher than their equivalent Codex MRLs and cannot be harmonized. The recommended U.S tolerance for succulent shelled peas and beans cannot be harmonized with the Codex MRLs for common beans and peas since the crop groups are defined differently. The Codex definitions are based on the crop being a pea or a bean, whereas the U.S. groups are based on whether the raw agricultural commodity is shelled or the pod is consumed.

V. Conclusion

Therefore, the tolerance is established for residues of zeta-cypermethrin and its inactive R-isomers, Z-cypermethrin (S-cyano (3-phenoxyphenyl) methyl (+/-) (*cis-trans* 3-(2,2-dichloro, in or on edible podded legume vegetables (Crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301207 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301207, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 23, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.418 is amended by removing the entire entries for ''hogs, meat'' and ''milk''; alphabetically adding 15 commodities; and revising

the entries for ''cattle, meat,'' ''goat, meat'' ''horse, meat,'' and ''sheep, meat,'' in the table in paragraph (a)(2) to read as follows:

§ 180.418 Cypermethrin and anisomer zeta-cypermethrin; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Aspirated grain fractions	10.0 ppm
* * * * *	
Cattle, meat	0.2 ppm
* * * * *	
Dried, shelled peas and beans, except soybean (Crop subgroup 6C)	0.05 ppm
Edible podded legume vegetables (Crop subgroup 6A)	0.5 ppm
* * * * *	
Fruiting vegetables, except cucurbits (Crop Group 8)	0.2 ppm
Goat, fat	1.00 ppm
* * * * *	
Goat, meat	0.2 ppm
* * * * *	
Hog, meat	0.2 ppm
* * * * *	
Horse, meat	0.2 ppm
* * * * *	
Sheep, meat	0.2 ppm
Sorghum, forage	0.1 ppm
Sorghum, grain	0.5 ppm
Sorghum, stover	5.0 ppm
Soybean, seed	0.05 ppm
Succulent, shelled peas and beans (Crop subgroup 6B)	0.1 ppm
* * * * *	
Wheat, forage	3.0 ppm
Wheat, grain	0.2 ppm
Wheat, hay	6.0 ppm
Wheat straw	7.0 ppm

* * * * *

[FR Doc. 02–2611 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; FCC 01–362]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC or Commission) continues to develop, adopt and implement a number of strategies to ensure that the numbering resources of the North American Numbering Plan (NANP) are used efficiently, and that all carriers have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace.

DATES: Effective March 14, 2002, except for §§ 52.19(c)(3)(i) and 52.19(c)(4), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sanford Williams, (202) 418–2320 or e-mail at *swilliam@fcc.gov* or Jennifer Gorny at (202) 418–2320 or *jgorny@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200 (Third Report and Order),* adopted on December 12, 2001, and released on December 28, 2001. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may also be obtained through the World Wide Web at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders,* or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of the Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200

1. With the rules adopted in the *Third Report and Order,* the Commission creates national standards to address numbering resource optimization. The *Third Report and Order,* among other things: (1) Declines to require paging providers and providers that do not have local number portability (LNP) and are operating outside the top 100 metropolitan statistical areas (MSA) to participate in thousands-block number pooling; (2) lifts the ban on service-specific and technology-specific overlays (collectively, specialized overlays or SOs), and provides that the Commission will consider petitions filed by state commissions for authority to implement SOs on a case-by-case basis; (3) subjects carriers that violate numbering requirements or fail to cooperate with an auditor conducting a ''for cause'' or random audit to the denial of requests for numbering resources; (4) allows incumbent local exchange carriers (LECs) subject to rate-of-return or price cap regulation to recover their carrier-specific costs directly related to national thousands-block number pooling through the existing cost recovery mechanisms of rate-of-return or price cap adjustments, and allows all other carriers to recover their carrier-specific costs related to pooling in any manner allowed under the Act; and (5) clarifies that all non-exempt carriers operating within the top 100 MSAs must be LNP-capable and must participate in thousands-block number pooling.

2. The *Third Report and Order* also finds that state commissions should be allowed to have password-protected access to the North American Numbering Plan Administration (NANPA) database to obtain data concerning area codes within their state.

3. The rules adopted herein facilitate increased carrier accountability and incentives to use numbers efficiently, and promote the judicious conservation of numbering resources.

Final Paperwork Reduction Analysis

4. This *Third Report and Order* contains some new and/or modified information collections, which will be submitted to OMB for approval, as prescribed by the Paperwork Reduction Act.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking (Second Report and Order),* 66 FR 9528 (Feb. 8, 2001). The Commission sought written public comment on the proposals in the *Second Report and Order,* including comment on the IRFA. No comments received addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Third Report and Order

6. In the *Second Report and Order,* we sought public comment on (a) the relative advantages of SOs as opposed to all-services overlays, and the conditions under which SOs, if adopted, should be implemented to promote competitive equity, maximize efficient use of numbering resources, and minimize customer inconvenience; (b) whether carriers should be held accountable when related carriers fail to comply with reporting requirements; (c) whether state commissions should be granted direct, password-protected access to the mandatory reporting data received by the NANPA; (d) whether to allow extensions (for a fee or otherwise) on the 180-day reservation period for numbers; (e) what enforcement mechanisms should be applied when a carrier either fails to cooperate with an audit, or fails to resolve identified areas of noncompliance; (f) whether state commissions should be allowed to conduct audits; (g) the costs associated with thousands-block number pooling; (h) whether to require carriers to become LNP-capable for the purpose of participating in thousands-block number pooling; and (i) whether a ''safety valve'' should be established for carriers that need additional numbering resources, but fail to meet the utilization threshold in a given rate center.

7. In this *Third Report and Order,* we continue efforts to utilize efficiently the numbering resources in the North American Numbering Plan (NANP). Our goal with this *Third Report and Order* is to build upon previous successes in working with the state commissions and the telecommunications industry to ensure that the limited numbering resources of the NANP do not exhaust prematurely, and to ensure that all carriers have the numbering resources they need to compete in the telecommunications marketplace. In particular, we address issues raised in the *Second Report and Order* and several petitions for reconsideration and/or clarification of the *Report and Order and Further Notice of Proposed Rulemaking,* 65 FR 37703 (June 16, 2000), and the *Second Report and Order.* In addition, we also clarify, on our own motion, certain aspects of our numbering resource optimization rules and local number portability requirements.

B. Summary of Significant Issues Raised by Public Comments

8. In a recent letter, the Small Business Administration (SBA) contends that in the Final Regulatory Flexibility Analysis for the *Second Report and Order* the Commission failed to ''* * * include a description of telecommunications service providers that are directly affected by the audit provisions * * *'' and believes that the ''* * * oversight may be due to the inconsistency in the text of the Order itself. Under the Commission's numbering rules, carriers and service providers are two separate classes.'' The SBA then notes that the terms ''carrier'' and ''service provider'' were used interchangeably within the audit provisions of the *Second Report and Order.*

9. Although the terms ''carrier'' and ''service provider'' were used interchangeably within the audit provisions, the rule on auditing procedures in section 52.15(k) of the Commission's rules (in Appendix A of the *Second Report and Order*) clearly applies to telecommunications service providers. As discussed in section 52.5(i) of the Commission's numbering rules, a service provider is an ''* * * entity that receives numbering resources from the NANPA * * *'' Thus, given our findings that the rule is clear, we conclude that the description of telecommunications service providers in the FRFA for the *Second Report and Order* was adequate, and that no clarifications are needed in the FRFA.

10. In the *SBA Letter,* the SBA states that, in the FRFA for the *Second Report and Order,* the Commission fails to ''* * * adequately consider alternatives to the audit program that would minimize the impact on small businesses.'' In the FRFA, the Commission is required to discuss significant alternatives that would change the impact on small businesses. Because we did not identify any significant alternatives to the rules that would influence the impact on small businesses, no significant alternatives were discussed in the FRFA for the *Second Report and Order.* The Commission also notes that the small businesses that commented on our audit proposal generally were in favor of audits.

11. Commenters responded to several issues addressed in the *Second Report and Order* that concern small entities. Their opinions are summarized below. In addition, the Commission has considered any potential significant economic impact of the rules on small entities.

12. *Thousands-Block Number Pooling for Non-LNP Capable Carriers.* Commenters generally agree that the costs to small and rural carriers to participate in thousands-block number pooling would outweigh any benefits derived from the pooling requirements. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) fears that the costs may be so prohibitive as to delay the implementation of advanced services to rural subscribers. The Commission agrees with commenters that there is insufficient evidence in the record to conclude that requiring non-LNP capable carriers to participate in pooling would result in significant number resource savings. Data from the Local Exchange Routing Guide (LERG) shows that in the approximately 2,012 rate centers in the 180 MSAs beyond the largest 100, approximately 1,320 are rate centers where there are no competing service providers and approximately 300 are rate centers where there is only one competing service provider. Because these carriers hold relatively few numbering resources, we agree that requiring them to participate in pooling would not result in significant numbering resource optimization benefits.

13. *Independent State Commissions' Authority to Conduct Audits.* One commenter expressed concern that giving states individual authority to conduct audits may expose carriers to two different standards. It predicts that this result would impose costs and burdens on small carriers that outweigh the benefits of the additional audits. The Commission declined to give states the independent authority to conduct audits, concluding that most of the audits that states would be given authority to conduct would serve the same purpose as the Commission audits, thus posing the potential burden of overlapping audits that would outweigh the benefits of the additional audits. It is the Commission's expectation, however, that the Commission audit staff will cooperate with state commissions, including coordinating compliance and enforcement activities and sharing information gathered during the course of the audits. In addition, this *Third Report and Order* does not modify a state commission's authority to conduct audits under state law.

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

14. 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 rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''

The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

15. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

17. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. *Federal Cost Recovery.* In the *Third Report and Order,* the Commission establishes a federal cost recovery mechanism under which price cap LECs may recover their extraordinary carrier-specific costs directly related to thousands-block number pooling through an exogenous adjustment to access charges. This may require carriers to submit cost analyses demonstrating that pooling results in a net cost increase rather than a cost reduction to qualify for the exogenous adjustment to access charges.

19. *Safety Valve.* The Commission establishes a safety valve in the *Third Report and Order* to ensure that carriers experiencing rapid growth in a given market will be able to meet customer demand. Carriers may demonstrate the need for the safety valve by demonstrating to their state commission that: (1) The carrier will exhaust its numbering resources in a market or rate area within three months (in lieu of the 6 months-to-exhaust requirement); and (2) projected growth is based on the carrier's actual growth in the market or rate area, or on the carrier's actual growth in a reasonably comparable market, but only if that projected growth varies no more than 15 percent from historical growth in the relevant market. A carrier may also be granted relief if it demonstrates that it has received a customer request for numbering resources in a given rate center that it cannot meet with its current inventory. If the customer request is withdrawn or declined, the requesting carrier must return the numbering resources to the NANPA or Pooling Administrator, and may not retain the numbering resources to serve other customers without first meeting our growth numbering resource requirements.

20. *Service-Specific and Technology—Specific Area Code Overlays* (collectively, specialized overlays or SOs). State commissions seeking to implement a SO will be required to seek authority on a case-by-case basis from the Commission. State commissioners should discuss why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay. State commissions should also specifically address the following: (1) The technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs; (6) whether there will be 10-digit dialing in the SO and the underlying area code(s); (7) whether the SO and underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. 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): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. *Thousands-Block Number Pooling for Non-LNP Capable Carriers.* In this *Third Report and Order,* we decline to extend pooling requirements to paging carriers and non-LNP capable carriers outside of the largest 100 MSAs that have not received a request to deploy LNP from a competing carrier. We believe the costs associated with the alternative of requiring all carriers, including small entities, to participate in pooling would greatly outweigh any numbering resource optimization benefits. In addition, these costs imposed on smaller and rural carriers may delay efforts in bringing advanced services to rural subscribers. Thus, we reaffirm our current rules that certain carriers, *e.g.,* paging carriers and carriers outside of the largest 100 MSAs who have not received a request to deploy LNP from a competing carrier, are exempted from pooling requirements.

23. *Service-Specific and Technology-Specific Area Code Overlays.* In this order, we lift the prohibition on SOs and will consider proposals submitted by state commissions to implement SOs on a case-by-case basis. Such an approach allows state commissions to consider the surrounding local circumstances, including the needs of small, local businesses, in deciding whether or how to provide area code

relief. In the alternative, we examined a requirement mandating that state commissions impose all-services area code overlays as the primary method for area code relief. However, the Commission believes that states should have the flexibility to determine the best form of area code relief.

Report to Congress

24. The Commission will send a copy of this *Third Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Third Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

25. Pursuant to Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this Third Report and Order is hereby Adopted and Part 52 of the Commission's rules Are Amended and Adopted as set forth in the rule changes.

26. The policies, rules and requirements adopted herein are adopted and shall be effective March 14, 2002, except for §§ 52.19(c)(3)(i) and 52.19(c)(4), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

27. Incumbent local exchange carriers seeking to recover carrier-specific costs directly related to national thousands-block number pooling as described herein may file the necessary tariffs to take effect no earlier than April 2, 2002.

28. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

PART 52—NUMBERING

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

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. In § 52.15, revise paragraphs (g)(4) and (k)(2) and add paragraphs (g)(5) and (k)(3) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(4) *Non-compliance.* The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an Operating Company Number (OCN). The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm, or may overturn, the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.

(5) *State access to applications.* State regulatory commissions shall have access to service provider's applications for numbering resources. The state commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.

* * * * *

(k) * * *

(2) The Enforcement Bureau will oversee the conduct and scope of all numbering audits conducted under the Commission's jurisdiction, and determine the audit procedures necessary to perform the audit. Numbering audits performed by independent auditors pursuant to this section shall be conducted in accordance with generally accepted auditing standards and the American Institute of Certified Public Accountants' standards for compliance attestation engagements, as supplemented by the guidance and direction of the Chief of the Enforcement Bureau.

(3) Requests for ''for cause'' audits shall be forwarded to the Chief of the Enforcement Bureau, with a copy to the Chief of the Common Carrier Bureau. Requests must state the reason for which a ''for cause'' audit is being requested and include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines. The Chief of the Enforcement Bureau will provide carriers up to 30 days to provide a written response to a request for a ''for cause'' audit.

3. In § 52.19, revise paragraph (c)(3) introductory text, and (c)(3)(i) and add paragraph (c)(4) to read as follows:

§ 52.19 Area code relief.

* * * * *

(c) * * *

(3) An all services area code overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s), subject to the following conditions:

(i) No all services area code overlay may be implemented unless all numbering resources in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity, except to the extent that a technology- or service-specific overlay is authorized by the Commission. No group of telecommunications carriers shall be excluded from assignment of numbering resources in the existing area code, or be assigned such resources only from the all services overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and

* * * * *

(4) A technology-specific or service-specific overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s) and numbering resources in the new area code overlay are assigned to a specific technology(ies) or service(s). State commissions may not implement a technology-specific or service-specific overlay without express authority from the Commission.

4. In § 52.21, add paragraph (r) to read as follows:

§ 52.21 Definitions.

* * * * *

(r) The term *100 largest Metropolitan Statistical Areas (MSAs)* refers to the MSAs set forth in the appendix to this part and any subsequent MSAs identified by U.S. Census Bureau data to be in the largest 100 MSAs.

[FR Doc. 02–3278 Filed 2–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 96–98; FCC 02–11]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document, the Commission dismisses the petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) filed by those parties that have not indicated an intent to pursue their respective petitions.

DATES: These petitions are dismissed as of February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in CC Docket Nos. 96–45, 96–98 released on January 29, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this document, the Commission dismisses the petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) filed by those parties that have not indicated an intent to pursue their respective petitions.

II. Discussion

2. To the extent that parties have not indicated an intent to pursue their respective petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) in response to the public notices, the Commission deems such petitions withdrawn and dismiss these petitions. The passage of time and intervening developments have rendered many such petitions moot or irrelevant in light of intervening events.

3. The Commission notes that several parties have refreshed the record in response to the public notices. The Commission will proceed to address these petitions for reconsideration in upcoming orders.

III. Ordering Clause

4. Pursuant to the authority contained in sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151 and 154(i), and § 1.429 of the Commission's rules, the petitions for reconsideration of the *Universal Service First Report and Order, Local Competition First Report and Order,* and *Local Competition Second Report and Order,* as listed in the attachments to this document, are dismissed as of February 12, 2002.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

ATTACHMENT A.—PETITIONS FOR RECONSIDERATION OF THE UNIVERSAL SERVICE FIRST REPORT AND ORDER

Commenter	Date filed
Ad Hoc	7/17/97
AirTouch Communications, Inc	7/17/97
Alaska Public Utilities Commission	7/17/97
Alaska Telephone Association	7/17/97
Alliance for Public Technology	7/14/97
ALLTEL	7/17/97
American Petroleum Institute	7/16/97
Arkansas Public Service Commission	7/16/97
Benton Foundation/Edgemont Neighborhood Coalition	7/23/97
Cellular Telecommunications Industry Association	7/17/97
Columbia Communications Corp	7/17/97
Comcast Cellular Communications, Inc	7/17/97
Fidelity Telephone Company	7/17/97
Florida Dept. of Education	7/17/97
Florida Dept. of Management Services	7/17/97
Florida Public Service Commission	7/16/97
GE American Communications, Inc	7/17/97
Georgia Dept. of Administrative Services—Info.Tech	7/17/97
General Communications, Inc	7/17/97
Global Village Schools Institute	6/25/97
GVNW	7/11/97
ITCs, Inc	7/17/97
Information Technology Assoc. of America	7/16/97
Iowa Telecommunications and Technology Commission	7/17/97
Kansas Corporation Commission	7/17/97
MCI Telecommunications Corporation	7/17/97
National Association of State Telecommunications Directors	7/17/97
National Exchange Carrier Association, Inc	7/17/97
New Jersey Division of the Ratepayer Advocate	7/17/97
New York Library Association	7/17/97
NEXTEL Communications, Inc	7/17/97
Ozark Telecom, Inc	7/17/97
Personal Communications Industry Association	7/17/97
ProNet Inc	7/17/97
Rural Telephone Companies	7/17/97
Sandwich Isles	7/17/97
Sprint Corp	7/17/97
Sprint Spectrum L.P.	7/17/97
Teletouch Licenses, Inc	7/17/97
TelHawaii, Inc	7/17/97
Texas Public Utilities Commission	7/16/97
Time Warner Communications Holdings, Inc	7/17/97
United Utilities	7/16/97
U.S. Catholic Conference, et al	7/17/97
US WEST	7/17/97
Vermont Public Service Board	7/17/97
Washington State Dept. of Information Services	7/17/97
Western Alliance	7/17/97

ATTACHMENT B.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION FIRST REPORT AND ORDER

Commenter	Date filed
Airtouch Paging, Cal-Autofone and Radio Electronic Products Corp	9/30/96
American Electric Power Service Corporation, et al	9/30/96
American Public Power Association	9/30/96
Association of American Railroads	9/30/96
Carolina Power & Light Company	9/30/96
Cellular Telecommunications Industry Association	9/30/96
Colorado Public Utilities Commission	9/27/96
Comcast Cellular Communications, Inc and Vanguard Cellular Systems, Inc	9/30/96
Consolidated Communications Telecom Services Inc	9/30/96
Consolidated Edison Company of New York, Inc	9/30/96
Cox Communications, Inc	9/30/96
Delmarva Power & Light Company	9/30/96
Duquesne Light Company	9/30/96
Edison Electric Institute, et al	9/30/96
Florida Power & Light Company	9/30/96
General Communication, Inc	9/30/96
Information Technology Association of America	9/30/96
Kalida Telephone Company, Inc	9/30/96
Local Exchange Carrier Coalition	9/30/96
Lower Colorado River Authority	9/30/96
Meek, Representative Carrie P	9/23/96
National Cable Television Association, Inc	9/30/96
Pacific Gas and Electric Company	9/30/96
Pennsylvania Power & Light Company	9/30/96
Pilgrim Telephone, Inc	9/30/96
Public Service Commission of Wisconsin	9/27/96
Public Utilities Commission of Ohio	9/30/96
Rand McNally & Company	9/30/96
Sprint Corporation	9/30/96
Teleport Communications Group Inc	9/30/96

ATTACHMENT B.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION FIRST REPORT AND ORDER—Continued

Commenter	Date filed
Texas Public Utility Commission	9/26/96
Time Warner Communications Holdings, Inc	9/30/96
UTC, The Telecommunications Association	9/30/96
Washington Utilities and Transportation Commission	9/30/96
Weldon, Representative Dave	9/23/96
WinStar Communications, Inc	9/30/96

ATTACHMENT C.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION SECOND REPORT AND ORDER

Commenter	Date filed
Airtouch Paging/PowerPage	10/7/96
Ameritech	10/7/96
AT&T	10/7/96
BellSouth Corp.	10/7/96
GTE Service Corp.	10/7/96
MCI Telecommunications Corp.	10/7/96
New York State Dept. of Public Service	10/7/96
NYNEX Telephone Companies	10/7/96
Rural Telephone Coalition	10/7/96
U.S. Telephone Association	10/7/96

[FR Doc. 02–3277 Filed 2–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–8663; Amdt. 195–75]

RIN 2127–AD56

Pipeline Safety: Hazardous Liquid Accident Reporting

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration.

ACTION: Final rule; correction.

SUMMARY: The Research and Special Programs Administration published a final rule in the **Federal Register** on January 8, 2002, regarding changes to the reporting requirements for hazardous liquid pipeline accidents. The effective date of this rule was inadvertently published as January 1, 2002. The correct effective date of this final rule is February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Little by phone at (202) 366–4569, by e-mail at *roger.little@rspa.dot.gov,* or by mail at the U.S. Department of Transportation (DOT), Research and Special Programs Administration, Office of Pipeline Safety, Room 7128, 400 7th Street, SW., Washington, DC 20590.

Correction

In the **Federal Register** issue of January 8, 2002, 67 FR 831, in the **DATES** heading, correct the effective date to ready February 7, 2002.

Issued in Washington, DC, February 6, 2002.

Ellen G. Engleman

Administrator.

[FR Doc. 02–3319 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–60–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB71

Notice of Confirmation of Direct Final Rule

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule establishing rules and regulations to administer the Treasury Rate Direct Loan Program, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on December 26, 2001 (66 FR 66293) is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Chief, Policy Analysis and Loan Management Staff, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4041 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: (202) 720–0424, FAX (202) 690–0717, E-mail: *rellinge@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In fiscal year 2001, Congress provided funding to establish a Treasury rate loan program to address the backlog of qualified loan applications for insured municipal rate electric loans from RUS. RUS administered the Treasury rate loan program in a manner substantially the same as it administered the municipal rate program under a Notice of Funding Availability (NOFA) published in the **Federal Register** at 65 FR 80830 on December 22, 2000. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76) authorizes a Treasury rate electric loan program of $750 million for FY 2002. RUS is amending its regulations to establish rules and regulations to administer the Treasury rate loan program.

Confirmation of Effective Date

This is to confirm the effective date of February 11, 2002, 7 CFR part 1710, Treasury Rate Direct Loan Program, published in the **Federal Register** on December 26, 2001, at 66 FR 66293.

Dated: January 29, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–3288 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–121–1]

Limited Ports of Entry for Pet Birds, Performing or Theatrical Birds, and Poultry and Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations regarding ports designated for the importation of pet birds, performing or theatrical birds, and poultry and poultry products by removing Boston, MA, from the lists of limited ports of entry. Very few of these animals or products are imported through the port of Boston, MA, as importers most often use other limited ports of entry to bring these animals and products into the United States. This action will update the regulations by removing an underutilized port from the lists.

DATES: This rule will be effective on April 15, 2002 unless we receive written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed by March 14, 2002.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 01–121–1, 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. 01–121–1. If you use 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. 01–121–1'' on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93, ''Importation of Certain Animals, Birds, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers'' (referred to below as the regulations), prescribe, among other things, conditions for importing pet birds, performing birds or theatrical birds, and poultry and poultry products into the United States. Section 93.102(d) contains a list of limited ports of entry

for pet birds imported into the United States under the provisions of § 93.101(c)(1) or § 93.101(c)(2) and for performing or theatrical birds imported under the provisions of § 93.101(f). Section 93.203(d) contains a list of limited ports of entry that are designated as having inspection facilities for the entry of poultry and poultry products such as poultry test specimens, or hatching eggs and day-old chicks which do not appear to require restraint and holding inspection facilities.

This rule will amend § 93.102(d) and § 92.203(d) in accordance with the procedures explained below under ''Dates.'' The amendments will remove Boston, MA, from both lists of limited ports of entry. Very few pet birds, performing birds, theatrical birds, poultry, or poultry products are currently imported through the port of Boston, MA. Importers are opting to use other limited ports of entry to bring these commodities into the United States, so we do not believe that removing Boston, MA, as a limited port for the entry of pet birds, performing or theatrical birds, and poultry and poultry products will have any negative effects on U.S. importers of these animals and products.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on April 15, 2002, unless we receive written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed by March 14, 2002.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule will remove Boston, MA, as a limited port of entry for the importation into the United States of pet birds, performing or theatrical birds, and poultry and poultry products. Very few of these animals or products are imported through the port of Boston, MA, as importers most often use other limited ports of entry to bring these animals and products into the United States. Therefore, we expect that this action will have no economic impact on any entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is amended by removing the words ''Boston, MA;''.

§ 93.203 [Amended]

3. In § 93.203, paragraph (d) is amended by removing the words ''Boston, Massachusetts;''.

Done in Washington, DC, this 6th day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–3343 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–153–AD; Amendment 39–12635; AD 2002–02–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, and corrective action if necessary. This action is necessary to prevent failure of the spring locking function of the slider mechanism due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on October 12, 2001 (66 FR 52068). That action proposed to require repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, 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.

Explanation of Change to Final Rule

The FAA's intention is for the follow-on actions in paragraphs (a)(1) and (a)(2) of this AD (application of corrosion inhibitor to the sliders, and repair or replacement of the slider, if necessary) to be accomplished before further flight after accomplishment of the detailed visual inspection and operational check in paragraph (a) of this AD. However, the words ''before further flight'' were inadvertently omitted from paragraphs (a)(1) and (a)(2) of the proposal. The FAA finds that our intent in those paragraphs is clear based on the fact that the All Operators Telexes referred to in this AD clearly include the application of corrosion inhibitor as part of the inspection procedures, and also explicitly indicate that repair or replacement of the slider, if necessary, must be accomplished before further flight. However, for further clarification, the FAA has revised paragraphs (a)(1) and (a)(2) of this AD to state that the actions in those paragraphs are required ''before further flight.''

Conclusion

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

Cost Impact

The FAA estimates that 9 Model A330 series airplanes of U.S. registry will be affected by this AD. No Model A340 series airplanes affected by this action are currently on the U.S. Register.

It will take approximately 3 work hours per airplane to accomplish the required inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,620, or $180 per airplane, per inspection cycle.

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:

2002–02–07 Airbus Industrie: Amendment 39–12635. Docket 2001–NM–153–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spring locking function of the slider due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation, accomplish the following:

Inspection

(a) Within 18 months since date of manufacture, or within 550 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection and an operational check of the spring function of the emergency exit door slider mechanism, in accordance with Airbus All Operators Telex (AOT) A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001.

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

(1) If all sliders lock properly: Before further flight, apply corrosion inhibitor to the sliders, in accordance with the applicable

AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

(2) If any slider does not lock properly: Before further flight, repair the slider or replace it with a new part, and apply corrosion inhibitor to the sliders; in accordance with the applicable AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A330–52A3063, Revision 01, dated January 3, 2001; or Airbus All Operators Telex A340–52A4075, Revision 01, dated January 3, 2001; 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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–053(B) and 2001–052(B), both dated February 7, 2001.

Effective Date

(e) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 31, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2929 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–332–AD; Amendment 39–12636; AD 2002–02–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –500 series airplanes, that requires replacement of the bolt and self-locking nut on the primary support pin of the main landing gear (MLG) support beam with a new bolt, castellated nut, washer, and cotter pin. This action is necessary to prevent the loosening and loss of the support pin retaining bolt on the MLG, which could result in the loosening and movement of the support pin and consequent cracked support fittings and collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Blilie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, and –500 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38587). That action proposed to require replacement of the bolt and self-locking nut on the primary support pin of the main landing gear (MLG) support beam with a new bolt, castellated nut, washer, and cotter pin.

Comments

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

Refer to New Service Information

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to refer to Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001, as the acceptable source of service information for the proposed actions. (The proposed AD refers to the original issue of the service bulletin, dated June 15, 2000, and Revision 1 of the service bulletin, dated October 12, 2000, as appropriate sources of service information for the proposed actions.)

The FAA concurs. Since the issuance of the proposed AD, we have reviewed and approved Revision 2 of the service bulletin. This revision provides significant detailed information on which airplanes need the work described in the service bulletin and which do not. For example, the actions in Boeing Service Bulletin 737–57A1260, Revision 2, do not apply to airplanes in Groups 3 and 4, as listed in the service bulletin, if the airplane has been modified per Boeing Service Bulletin 737–57–1172, dated October 15, 1987; OR Boeing Service Bulletin 737–57–1216, dated December 17, 1992, Revision 1, dated September 23, 1993, or Revision 2, dated May 6, 1999 (but not both of those service bulletins). Revision 2 of the service bulletin also provides instructions for certain airplanes in alternative configurations. Because these changes are relieving in nature, we find that it is appropriate to revise paragraph (a), as well as the applicability statement, of this final rule to refer to Revision 2 of the service bulletin. We have also added a new Note 2 to this AD (and reordered a subsequent note accordingly) to state that accomplishment of the actions before the effective date of this AD per the original issue or Revision 1 of Boeing Service Bulletin 737–57A1260 is acceptable for compliance with paragraph (a) of this AD.

Another commenter reports that, when it tried to do Boeing Service Bulletin 737–57A1260 on an affected airplane, it found that the bolt sizes identified in that service bulletin did

not match parts included with the associated kit. The commenter asks how Boeing will revise the service bulletin. We infer that the commenter attempted to accomplish the original issue or Revision 1 of the service bulletin, and we also infer that the commenter's airplane is one of the airplanes of alternative configuration which are acknowledged in Revision 2 of the service bulletin. We note that revising the final rule as described previously will positively address the commenter's concern, and no further change to the final rule is needed in this regard.

A third commenter requests that we revise the proposed AD to refer to Boeing Alert Service Bulletin 737–57A1260, Information Notice (IN) 02. The commenter notes that this IN contains information about alternative configurations and methods related to the installation of the castellated nut and cotter pin. We note that the data in the IN to which the commenter refers have been incorporated into Boeing Service Bulletin 737–57A1260, Revision 2; thus, no further change to the final rule is needed.

Acknowledge Other Configurations

One commenter requests that we revise the proposed AD to state that accomplishment of Boeing Service Bulletin 737–57–1172 or 737–57–1216 is equivalent to the accomplishment of the original issue or Revision 1 of Boeing Alert Service Bulletin 737–57A1260. Along with its comment, the commenter includes a copy of a telex from the airplane manufacturer which indicates that a castellated nut with a cotter pin through the bolt shank meets the intent of Boeing Service Bulletin 737–57A1260.

We concur with the intent of the commenter's request. Airplanes in certain configurations, as defined under paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–57A1260, Revision 2, are not subject to the requirements of this AD. Therefore, we have added a new paragraph (b) to this AD (and reordered subsequent paragraphs accordingly) to clarify that airplanes in the configurations specified in Revision 2 are not subject to this AD. In addition, for clarification, we have revised paragraph (a) of this AD to specify that the existing parts to be replaced are a RETAINING bolt, a SELF-LOCKING nut, and associated hardware.

Refer to Related Service Bulletin

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to explicitly caution operators that accomplishment of the actions in Boeing Service Bulletin 737–57–1216 may result in installation of self-locking nuts that are the subject of this AD. The commenter asserts that the sequencing of Boeing Service Bulletins 737–57–1216 and 737–57A1260 is critical. The commenter points out that the relationship between these service bulletins is noted in Boeing Service Bulletin 737–57–1216, Revision 2, IN 04, dated October 12, 2000. (That IN informs operators of certain airplanes that, if they do Boeing Service Bulletin 737–57–1216, they may be subject to Boeing Service Bulletin 737–57A1260.)

We concur with the commenter's request. While operators are responsible for installing only approved parts, we acknowledge that it may be helpful to advise operators of a related service bulletin that may conflict with the actions in this AD. We have added Note 1 to this final rule accordingly.

Limit Applicability

One commenter states that, if the unsafe condition exists only in ''a batch of Kaynar nuts,'' as stated in the referenced service bulletin, then the applicability of the proposed AD should be limited to airplanes built in the time period when that batch of nuts was used.

The FAA infers that the commenter is requesting that the applicability of this AD be limited. We note that the revision of the applicability to refer to Revision 2 of the service bulletin, as described previously, may address the commenter's concern, and we do not concur that any further change to this final rule needs to be made. The airplanes listed in the Effectivity section of the referenced service bulletin are those that the airplane manufacturer cannot be certain do not have affected nuts installed. While only certain airplanes included in the applicability of this AD will have discrepant nuts installed, neither we nor the airplane manufacturer are able to narrow the list of potentially affected airplanes any further than it has already been narrowed by Boeing Service Bulletin 737–57A1260, Revision 2.

Extend Compliance Time

Several commenters request that the FAA extend the compliance time for the proposed replacement. One commenter suggests only extension of the compliance time from the earlier of 12 months or 1,500 flight cycles after the effective date of the AD, to the earlier of 24 months or 4,000 flight cycles after the effective date of the AD. Three other commenters suggest adding new repetitive inspections for discrepancies of the nut and bolt at the proposed compliance time of the earlier of 12 months or 1,500 flight cycles after the effective date of the AD, and requiring the proposed replacement at the earlier of 24 months or 4,500 flight cycles after the effective date of the AD. Most of the commenters state that such an extension would ease scheduling difficulties by allowing affected operators to accomplish the proposed replacement at a scheduled maintenance visit.

We do not concur with the commenters' requests. The commenters provide no technical justification to show that extension of the compliance time would provide an acceptable level of safety. While the compliance time for the replacement required by this AD is based on the manufacturer's recommendation in its service bulletin, the FAA also considered the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet in developing an appropriate compliance time for this action. In light of all of these factors, the FAA finds a compliance time of 12 months or 1,500 flight cycles after the effective date of this AD, whichever is earlier, for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the final rule is needed in this regard.

Conclusion

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

Cost Impact

There are approximately 2,300 Model 737–200, -200C, -300, and -500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 980 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $39 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $391,020, or $399 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:

2002–02–08 Boeing: Amendment 39–12636. Docket 2000–NM–332–AD.

Applicability: Model 737–200, –200C, –300, and –500 series airplanes; as identified in Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001; certificated in any category.

Note 1: Operators should note that, if self-locking nuts are installed on the support beam for the main landing gear (MLG) during accomplishment of Boeing Service Bulletin 737–57–1216, dated December 17, 1992; Revision 1, dated September 23, 1993; or Revision 2, dated May 6, 1999; the airplane may be subject to the requirements of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loosening and loss of the support pin retaining bolt on the MLG, which could result in the loosening and movement of the support pin, consequent cracked support fittings, and collapse of the MLG, accomplish the following:

Replacement

(a) Within 12 months from the effective date of this AD, or within 1,500 flight cycles from the effective date of this AD, whichever occurs first, replace the retaining bolt, self-locking nut, and associated hardware of the support beam for the MLG with a new bolt, castellated nut, and new hardware, per the Accomplishment Instructions of Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001.

Note 3: Replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–57A1260, dated June 15, 2000; or Revision 1, dated October 12, 2000; are acceptable for compliance with paragraph (a) of this AD.

Airplanes in Other Configurations

(b) As shown under paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001, if the airplane is in a configuration in which a drilled shank bolt, castellated nut, and cotter pin are installed in the subject areas of the support beam for the MLG, no action is necessary per this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 737–57A1260, Revision 2, dated October 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 31, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2928 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–392–AD; Amendment 39–12634; AD 2002–02–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330–243, –341, –342, and –343 series airplanes. This action requires modifying the rear engine mount by replacing the existing fail-safe link with a new, improved fail-safe link. This action is necessary to prevent failure of the fail-safe link of the rear engine

mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–392–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–243, –341, –342, and –343 series airplanes, which are equipped with Rolls-Royce engines. The DGAC advises that fatigue tests have revealed that the fail-safe link of the rear engine mount may not have adequate fatigue strength. The fail-safe link is intended to withstand operational loads in the event of loss of the primary load path for the engine. Failure of the fail-safe link of the rear engine mount, when combined with loss of the primary load path for the engine, could result in separation of the engine from the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–71–3010, dated September 25, 1999, which describes procedures for modifying the rear engine mount on the left- and right-hand sides of the airplane by replacing the existing fail-safe link with a new, improved fail-safe link. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–544(B), dated November 14, 2001, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A330–71–3010 refers to Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, as an additional source of service information for modification of the rear engine mount. The modification includes replacing the two-piece bearing with a one-piece bearing and increasing the thickness of the fail-safe link.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent failure of the fail-safe link of the rear engine mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane. This AD requires accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 40 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be provided by the engine manufacturer at no charge to the operators. Based on these figures, the cost impact of this AD would be $2,400 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–392–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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

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:

2002–02–06 Airbus Industrie: Amendment 39–12634. Docket 2001–NM–392–AD.

Applicability: Model A330–243, –341, –342, and –343 series airplanes; certificated in any category; except those on which Airbus Modification 46877 (Airbus Service Bulletin A330–71–3010, dated September 25, 1999) or Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fail-safe link of the rear engine mount, which, in combination with failure of the primary load path for the engine, could result in separation of the engine from the airplane, accomplish the following:

Replacement

(a) Before accumulating 8,000 total flight cycles on the fail-safe link of the rear engine mount, or within 30 days after the effective date of this AD, whichever is later: Modify the rear engine mount on the left- and right-hand sides of the airplane by replacing the existing fail-safe link, part number FK11282, with a new, improved fail-safe link, according to Airbus Service Bulletin A330–71–3010, dated September 25, 1999.

Note 2: Airbus Service Bulletin A330–71–3010 refers to Rolls-Royce Service Bulletin RB211–71–C639, dated September 10, 1999, as an additional source of service information for modification of the rear engine mount. The modification includes replacing the two-piece bearing with a one-piece bearing and increasing the thickness of the fail-safe link.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–71–3010, dated September 25, 1999. 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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–544(B), dated November 14, 2001.

Effective Date

(e) This amendment becomes effective on February 27, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2927 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–253–AD; Amendment 39–12633; AD 2002–02–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, 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; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. This AD requires repetitive overhaul, including associated modifications, of the ram air turbine (RAT). This action is necessary to prevent failure of the RAT to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: 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; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; was published in the **Federal Register** on November 19, 2001 (66 FR 57900). That action proposed to require repetitive overhaul, including associated modifications, of the ram air turbine (RAT).

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 153 Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 series airplanes; of U.S. registry will be affected by this AD. It will take approximately 4 work hours per airplane to remove and replace the RAT, at an average labor rate of $60 per work hour. Incorporation of the various modifications that will be required to complete the required overhaul at the overhaul facility will cost an average of approximately $67,500 per airplane, based on vendor-supplied information. Based on these figures, the average cost impact of the requirements of this AD on U.S. operators is estimated to be $67,740 per airplane, per overhaul.

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:

2002–02–05 Airbus Industrie: Amendment 39–12633. Docket 2001–NM–253–AD.

Applicability: Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 series airplanes; certificated in any category; equipped with Dowty or Hamilton Sundstrand ram air turbines (RATs).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane, accomplish the following:

Overhaul

(a) Prior to the accumulation of 20 years since the date of manufacture of the airplane, or within 2 years after the date of this AD, whichever occurs later: Overhaul the RAT in accordance with Airbus Service Bulletin A300–29–0118, dated April 20, 2001 (for Model A300 B2 and A300 B4 series airplanes); A300–29–6049, Revision 02, dated September 10, 2001 (for Model A300–600 series airplanes); or A310–29–2087, dated April 20, 2001 (for Model A310 series airplanes); as applicable. Thereafter, repeat the overhaul at least every 20 years, in

accordance with the applicable service bulletin.

Note 2: Accomplishment prior to the effective date of this AD of the overhaul in accordance with Airbus Service Bulletin A300–29–6049, dated April 20, 2001, or Revision 01, dated July 23, 2001, is acceptable for compliance with the initial overhaul requirement of paragraph (a) of this AD.

Note 3: The service bulletins identified in paragraph (a) of this AD refer to Hamilton Sundstrand Service Bulletins 730816–29–12, ERPS26T–29–4, and 732365–29–4 as additional sources of service information for the overhaul actions.

Concurrent Modification Requirements

(b) Prior to or concurrently with the overhaul required by paragraph (a) of this AD, perform the applicable modifications specified in the following table:

TABLE 1.—CONCURRENT MODIFICATIONS

For model—	Modify the airplane by—	In accordance with—	Which refers to the following additional source of service information:
(1) A300 series airplanes.	(i) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A300–29–0106, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(ii) Replacing the RAT with a modified RAT.	Airbus Service Bulletin A300–29–0115, Revision 01, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(2) A300–600 series airplanes.	(i) Replacing the RAT blade release cable and sheath and modifying the RAT identification plate.	Airbus Service Bulletin A300–29–6004, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987.	Hamilton Sundstrand Service Bulletin 732365–29–1.
	(ii) Modifying the RAT	Airbus Service Bulletin A300–29–6005, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 732365–29–2.
	(iii) Installing a grease nipple andn a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A300–29–6039, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(iv) Replacing the RAT with a modified RAT.	Airbus Service A300–29–6046, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(3) A310 series airplanes.	(i) Reidentifying RATs and RAT assemblies thatare in good condition, performing functional tests, and reidentifying certain RATs.	Airbus Service A310–29–2003, dated January 20, 1984.	[reserved]
	(ii) Replacing the blade release cablel and sheath and modifying the RAT identification plate.	Airbus Service A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987.	Hamilton Sundstrand Service Bulletin 730816–29–9.
	(iii) Modifying the RAT	Airbus Service Bulletin A310–29–2011, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 730816–29–10.
	(iv) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A310–29–2078, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(v) Modifying the RAT	Airbus Service Bulletin A310–29–2084, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.

Note 4: The following Airbus service bulletins are also acceptable for compliance with the applicable requirements of paragraph (b) of this AD:

A300–29–0106, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–0115, dated September 14, 1998.

A300–29–6003, dated January 31, 1985.

A300–29–6005, dated June 21, 1985.

A300–29–6039, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–6046, dated September 14, 1998; and Revision 01, dated December 16, 1998.

A310–29–2011, dated June 21, 1985.

A310–29–2078, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A310–29–2084, dated September 14, 1998; and Revision 01, dated December 16, 1998.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–29–0106, Revision 04, dated March 22, 2001; Airbus Service Bulletin A300–29–0115, Revision 01, dated June 28, 2000; Airbus Service Bulletin A300–29–0118, dated April 20, 2001; Airbus Service Bulletin A300–29–6003, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987; Airbus Service Bulletin A300–29–6005, Revision 1, dated September 2, 1986; Airbus Service Bulletin A300–29–6039, Revision 04, dated March 22, 2001; Airbus Service Bulletin A300–29–6046, Revision 02, dated June 28, 2000; Airbus Service Bulletin A300–29–6049, Revision 02, dated September 10, 2001; Airbus Service Bulletin A310–29–2003, dated January 20, 1984; Airbus Service Bulletin A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987; Airbus Service Bulletin A310–29–2011, Revision 1, dated September 2, 1986; Airbus Service Bulletin A310–29–2078, Revision 04, dated March 22, 2001; Airbus Service Bulletin A310–29–2084, Revision 02, dated June 28, 2000; and Airbus Service Bulletin A310–29–2087, dated April 20, 2001; as applicable. Revision 1 of Airbus Service Bulletin A300–29–6005 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	1	Sept. 2, 1986.
3	Original ..	June 21, 1985.

Revision 1 of Airbus Service Bulletin A310–29–2011 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	1	Sept. 2, 1986.
3, 4	Original ..	June 21, 1985.

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 Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 2001–212(B), dated May 30, 2001.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2926 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–07–AD; Amendment 39–12632; AD 2002–02–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires a one-time inspection of a wire bundle in the left wing front spar for chafing and for proper installation of a Teflon sleeve; corrective action, if necessary; and installation of extra protection against chafing. This action is necessary to prevent chafing between the wire bundle and the left wing front spar, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44323). That action proposed to require a one-time inspection of a wire bundle in the left wing front spar for chafing and for proper installation of a Teflon sleeve; corrective action, if necessary; and installation of extra protection against chafing.

Comments

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

Give Credit for Accomplishment of Related Service Letters

One commenter requests that the FAA revise the proposed AD to give credit to operators who have accomplished the actions specified in the proposed AD in accordance with service information other than that identified in the proposed AD. The commenter notes that Boeing Service Letters 757–SL–29–024–B, dated November 3, 1995, and 757–SL–29–024–C, dated June 13, 2000, also address the unsafe condition identified in the proposed AD. The commenter further states that it has inspected its affected airplanes in accordance with Boeing Service Letter 757–SL–29–024–C.

The FAA concurs with the commenter's request. We find that the procedures in the service letters referenced by the commenter are nearly identical to those in Boeing Service Bulletins 757–29–0058 and 757–29–0059, both dated November 9, 2000, which the proposed AD identifies as appropriate sources of service information. Therefore, we have added a new Note 2, and renumbered subsequent notes from the proposed AD accordingly, to give credit for actions accomplished before the effective date of this AD in accordance with Boeing Service Letter 757–SL–29–024–B or 757–SL–29–024–C.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither

increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,058 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 615 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $36,900, or $60 per airplane.

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

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:

2002–02–04 Boeing: Amendment 39–12632. Docket 2001–NM–07–AD.

Applicability: Model 757 series airplanes, certificated in any category, as listed in Boeing Service Bulletins 757–29–0058 and 757–29–0059, both dated November 9, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing between the wire bundle and the left wing front spar, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire, accomplish the following:

Compliance Time

(a) Within 6 months from the effective date of this AD, perform the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Boeing Service Bulletin 757–29–0058, dated November 9, 2000 (for Model 757–200 series airplanes); or Boeing Service Bulletin 757–29–0059, also dated November 9, 2000 (for Model 757–300 series airplanes); as applicable.

Note 2: Inspections, repairs, and installations accomplished before the effective date of this AD in accordance with Boeing Service Letter 757–SL–29–024–B, dated November 3, 1995, or 757–SL–29–024–C, dated June 13, 2000, are acceptable for compliance with the applicable action specified in this AD.

Inspection and Corrective Action

(1) Perform a detailed visual inspection of the wire bundle, part number (P/N) W5100, adjacent to front spar station 318.99 in the left wing leading edge, to detect chafing. If any damage is found, before further flight, repair the wire bundle.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification

(2) Install a caterpillar grommet to the edge of the spar lower chord in the left wing leading edge.

Inspection and Corrective Action

(3) Perform a general visual inspection for proper installation of perforated Teflon sleeving on the wire bundle, P/N W5100. If sleeving does not exist or is not covering the area from 1.0 inch beyond the clamp point to 3.0 inches below the spar flange edge, before further flight, install or repair the Teflon sleeving.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, 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.''

Note 5: An optional 0.5-inch spacer may be used in accordance with the applicable service bulletin above, Section 3, Accomplishment Instructions, Work Instructions, to prevent the wire bundle from contacting the lower chord of the front spar on the left wing.

Reporting

(b) If the Teflon sleeving is found missing or improperly installed during the inspection required in paragraph (a)(3) of this AD, submit a report of inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days

after performing the inspection required by paragraph (a)(3) of this AD.

(2) For airplanes on which the inspection specified in paragraph (a)(3) has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 757–29–0058, dated November 9, 2000; or Boeing Service Bulletin 757–29–0059, dated November 9, 2000; 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on January 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2925 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–242–AD; Amendment 39–12646; AD 2002–03–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires, among other things, repetitive leak tests of the lavatory drain systems and repair, if necessary; installation of a lever lock cap, vacuum breaker check valve, or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of ''donut'' type waste drain valves installed in the waste drain system. This amendment is prompted by continuing reports of damage to engines, airframes, and property on the ground, caused by ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this AD are intended to prevent such damage associated with the problems of ''blue ice.''

DATES: Effective March 19, 2002.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

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 McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on July 9, 1998 (63 FR 37074). That action proposed to require among other things, repetitive leak tests of the lavatory drain systems and repair, if necessary; installation of a lever lock cap, vacuum breaker check valve, or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of ''donut'' type waste drain valves installed in the waste drain system.

Comments Received

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

Support for the Proposed Rule

One commenter agrees with the proposal.

Request To Use a Leak Check Tool

One commenter requests that the FAA revise paragraph (a) of the proposed rule to specify that it is not necessary to pressurize the aircraft to verify the integrity of service panel drain valves if the maintenance personnel perform a leak test. The commenter states that such a revision would be consistent with other ADs. The commenter also notes that such testing of the inner seal with air in a leak test is much more stringent than testing with a liquid, as it is obviously much easier for air to leak than the lavatory fluid. The commenter also requests that the FAA revise the duration of the leak test from five minutes to one minute when testing the inner seals of service panel valves with a leak check tool that applies a vacuum from the downstream side of the valve.

The FAA does not agree that paragraph (a) of this AD should be revised for the reasons the commenter states. We note that the Shaw Aero vacuum test tool has been approved to allow testing without requiring fluid upstream of the valve. However, if specific procedures were provided for using a leak test too, the FAA would consider a request for an alternative method of compliance in accordance with paragraph (d) of this AD. Since the commenter did not submit data that would justify a shorter interval for the vacuum test tool, we have no basis to reduce the duration of the leak test. No change is necessary to the final rule in this regard.

Request To Revise the Interval for Changing the Valve Seals

One commenter requests that the interval for changing the Pneudraulics valve seals specified in paragraph (a) of the proposed rule be reduced from every

6,000 flight hours to every 5,000 flight hours. The commenter states that the design limitations, and the potential for ice, hardened debris, and ''black tar'' build-up on the ball at the service panel seals are much more susceptible to damage. Additionally, the commenter notes that the location of the service panel (Pneudraulics valve) relative to the in-line ball valve makes those seals or mating surfaces more susceptible to damage by service and maintenance personnel.

The FAA does not agree with the commenter's request. The 6,000-flight hour interval for changing the Pneudraulics valve seals is based on extensive operating experience. Further, we have received no adverse reports on the Pneudraulics valve seals describing those problems that were indicated by the commenter. No change to the final rule is necessary in this regard.

Request To Extend the Leak Check Intervals for Certain Valves

One commenter requests that the leak test interval for Shaw Aero valves listed in Table 1 of the proposed AD be extended from every 1,000 flight hours to every 2,000 flight hours. The commenter argues that the in-service history of the Shaw Aero devices demonstrates a reliability factor that justifies such an extension.

The FAA agrees with the commenter's request, and has previously provided a similar interval extension for those valves on other ''blue ice'' related ADs. We have revised Table 1 of the final rule to reflect extension of the leak check interval to every 2,000 flight hours for those valves. Since the valves specified in Table 1 are now approved for an interval of 2,000 flight hours, we have removed Table 1 from paragraph (a)(4) of the NPRM that specifies approval for an interval of 1,000 flight hours, and have inserted Table 1 into paragraph (a)(3) of the final rule that specifies approval for valves with an interval of 2,000 flight hours.

Request To Correct Certain Part Numbers (P/Ns)

One commenter requests that certain P/Ns listed in Table 1 of the proposed AD be corrected. The FAA concurs and has revised Table 1 of the final rule.

Request To Revise Economic Estimate

This same commenter requests that the FAA add the cost of performing a leak check with the vacuum pump test tool. The commenter states that operators should be made aware that the vacuum pump test tool is more economical than pressurizing the airplane to obtain the required 3-pounds-per-square-32inch (psi) differential pressure.

The FAA does not agree that the estimated costs should be revised for the reasons the commenter states. As stated above, operators may request an alternative method of compliance for using the vacuum pump test tool by providing us with specific procedures for performing the leak test. Even though using the vacuum pump test tool may be less costly and may reduce the time required to perform the leak test, no dollar values were provided to us for comparison. No change is necessary to the final rule in this regard.

Conclusion

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

Cost Impact

There are approximately 306 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 229 airplanes of U.S. registry and 26 U.S. operators will be affected by this AD.

The required waste drain system leak test and outer cap inspections will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the waste drain system leak test and outer cap inspection is estimated to be $82,440, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have ''donut'' type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations will be required to be leak tested as few as 3 times each year. Based on these figures, the cost impact of this requirement is estimated to be between $1,080 and $5,400 per airplane, per year.

With regard to replacement of ''donut'' type drain valves, the cost of a new valve is approximately $1,200. However, the number of leakage tests for an airplane that flies an average of 3,000 flight hours a year is reduced from 15 tests to 3 tests, which essentially pays for the cost of the replacement valve, so that no additional net cost is incurred because of this change.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor rate of $60 per work hour. As with leak tests, certain airplanes will be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the cost impact of the required repetitive visual inspections is estimated to be between $180 and $900 per airplane, per year.

The required installation of the flush/fill line cap will take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be $275 per cap. There is an average of 2.5 caps per airplane. Based on these figures, the cost impact of these requirements on U.S. operators is estimated to be $171,178, or $748 per airplane.

The seal replacements of the drain valves required by paragraph (a) of this AD will take approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts will be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these requirements is estimated to be $73,280, or $320 per airplane, per replacement.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions required in this AD were to be conducted as ''stand alone'' actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because ADs require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest

of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–03–05 McDonnell Douglas: Amendment 39–12646. Docket 97–NM–242–AD.

Applicability: Model DC–8 series airplanes equipped with a lavatory drainage system; certificated in any category.

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

Compliance: Required as indicated, unless previously accomplished.

To prevent engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of ''blue ice'' that has formed from leakage of the lavatory drain system or flush/fill system and dislodged from the airplane, accomplish the following:

(a) Accomplish the applicable requirements of paragraphs (a)(1) through (a)(9) of this AD at the time specified in each paragraph. For the waste drain system of any lavatory that incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. During the performance of the waste drain system valve leak tests specified in this AD, fluid shall completely cover the upstream end of the valve being tested. The direction of the 3-pounds per square inch differential pressure (PSID) shall be applied in the same direction as occurs in flight; the other waste drain system valves shall be open, and the minimum time to maintain the differential pressure shall be 5 minutes. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Inclusion of a valve in this AD does not mean that the valve has been certified for installation in DC–8 series airplanes. Certification of the valve for installation in the airplane must be accomplished by means acceptable to the FAA, if the valve has not been previously certified.

(1) Replace the valve seals with new valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision P/N series 2651–278 or 2651–357: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a Pneudraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, replace the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision P/N series 2651–278: Within 4,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 4,500 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring-loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection to detect wear or damage that may allow leakage of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces.

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, 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.''

(3) For each lavatory drain system that has any of the following service panel drain valves installed: Pneudraulics P/N series 9527, Kaiser Electroprecision P/N 2651–357, or the Shaw Aero P/N's listed in Table 1 of this paragraph: Within 2,000 flight hours

after the effective date of this AD, and thereafter at intervals not to exceed 2,000 flight hours, accomplish the procedures specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Table 1 is as follows:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 2,000 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part number	Serial numbers approved for 2,000-hour leak test interval
A. 331 Series and 332 Series	All.
B. 10101000B–A–1	201 and higher.
C. 10101000BA2	0130 and higher.
D. Certain 10101000B valves	Any of these ''B'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked ''SBB38–1–58''.
E. 10101000C–A–1	0277 and higher.
F. 10101000CN OR C–N	3649 and higher.
G. Certain 10101000C valves	Any of these ''C'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000C–38–2 dated October 7, 1994, and are marked ''SBC38–2–58''.
H. 10101000C–R	191 and higher (747–400).
I. 10101000C–G	Superseded by 10101000C–R (747–400).

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision P/N series 0218–0032: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (a)(4)(i) and (a)(4)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision P/N series 0218–0026; or Shaw Aero Devices P/N series 10101000B or 10101000C (except as specified in paragraph (a)(3) of this AD): Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the procedures specified in paragraphs (a)(5)(i) and (a)(5)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(6) For each lavatory drain system with a lavatory drain system valve that incorporates either ''donut'' plug, Kaiser Electroprecision P/Ns 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange P/Ns 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; Shaw Aero Devices assembly P/N 0008–100; or other FAA-approved equivalent parts; accomplish the requirements of paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this AD at the times specified in those paragraphs. For the purposes of this paragraph ((a)(6)), ''FAA-approved equivalent part'' means either a ''donut'' plug which mates with the cap/flange P/Ns listed above, or a cap/flange which mates with the ''donut'' plug P/Ns listed above, such that the cap/flange and ''donut'' plug are used together as an assembled valve.

(i) Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(6)(i) of this AD.

(iii) Within 5,000 flight hours after the effective date of this AD, replace all the ''donut'' valves identified in paragraph (a)(6) of this AD with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(7) For each lavatory drain system not addressed in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the procedures specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this AD.

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(8) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (a)(8)(i) or (a)(8)(ii) of this AD, as applicable; and paragraph (a)(8)(iii) of this AD. Thereafter, repeat these requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve, in accordance with the applicable portions of paragraph (a)(8)(ii)(A) of this AD.

(ii) If a vacuum breaker check valve, Monogram P/N series 3765–190, or Shaw Aero Devices P/N series 301–0009–01 is

installed on the subject lavatory, replace the seals/O-rings in the valve. Perform a leak test of the vacuum breaker check valve and verify proper operation of the vent line vacuum breaker, in accordance with paragraphs (a)(8)(ii)(A) and (a)(8)(ii)(B) of this AD.

(A) Leak test the toilet tank anti-siphon (check) valve or the vacuum breaker check valve by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl). Apply 3 PSID across the valve in the same direction as occurs in flight. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Check for leakage at the flush/fill line port for a period of 5 minutes.

(B) Verify proper operation of the vent line vacuum breaker by filling the tank and checking at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. If back drainage does not occur, replace the vent line vacuum breaker or repair the vacuum breaker check valve, in accordance with the component maintenance manual, to obtain proper back drainage. As an alternative to the test technique specified above, verify proper operation of the vent line vacuum breaker in accordance with the procedures of the applicable component maintenance manual.

(iii) If a flush/fill ball valve, Kaiser Electroprecision P/N series 0062–0009, is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(8)(ii)(A) of this AD.

(9) If leakage is discovered during any leak test or inspection required by paragraph (a) of this AD, or if evidence of leakage is found at any other time, accomplish the requirements of paragraph (a)(9)(i), (a)(9)(ii), or (a)(9)(iii) of this AD, as applicable.

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the appropriate leak test as specified in paragraph (a) of this AD, as applicable. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 4: For purposes of this AD, ''leakage'' is defined as any visible leakage, if observed during a leak test. At any other time (than during a leak test), ''leakage'' is defined as the presence of ice in the service panel, or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(9)(i) or (a)(9)(ii) of this AD: Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) For all airplanes: Unless accomplished previously, within 5,000 flight hours after the effective date of this AD, perform the actions specified in either paragraph (b)(1), (b)(2), or (b)(3) of this AD:

(1) Install an FAA-approved lever lock cap on the flush/fill lines for all lavatories. Or

(2) Install a vacuum break, Monogram P/N series 3765–190, or Shaw Aero Devices P/N series 301–0009–01, in the flush/fill lines for all lavatories. Or

(3) Install a flush/fill ball valve, Kaiser Electroprecision P/N series 0062–0009, on the flush/fill lines for all lavatories.

(c) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed in accordance with the new operator's schedule, in accordance with paragraph (a) of this AD.

(1) For airplanes that have been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever results in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA Principal Maintenance Inspector (PMI), but within a period not to exceed 200 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on February 5, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3311 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–39–AD; Amendment 39–12639; AD 2002–02–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect certain oleo attachment brackets for cracks and replace any cracked bracket found during any inspection. In working with the United Kingdom, we have determined that the bracket may, as an option, be replaced with a newly designed steel bracket, increasing the length of time between the repetitive inspections. The actions specified by this AD are intended to detect and correct cracked oleo attachment brackets. Such a condition could cause the attachment bracket to fail, which could result in detachment of the main landing gear.

DATES: This AD becomes effective on March 25, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 25, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the

Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified FAA that an unsafe condition may exist on all BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. The United Kingdom CAA reports five occurrences of failure of the oleo attachment bracket, part number (P/N) NB–40–0075. This bracket is the main attachment point for the main landing gear. The CAA determined that the cause for failure of these brackets is the current design of P/N NB–40–0075.

What Is the Potential Impact If FAA Took No Action?

Cracked oleo attachment brackets, if not detected and corrected, could fail and detach from the main landing gear.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 23, 2001 (66 FR 58687). The NPRM proposed to require you to repetitively inspect the oleo attachment brackets, P/N NB–40–0075, for cracks and replace any cracked bracket found during any inspection. Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with B–N Service Bulletin Number 273, Issue 2, dated January 12, 2000.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Oleo Attachment Brackets?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures.

The manufacturer has changed the design of the oleo attachment bracket, P/N NB–40–0075, which is made of aluminum alloy. The newly designed oleo attachment bracket, P/N NB–40–0479, is made of steel. This design reduces the number of repetitive inspections. The newly designed part has been introduced in Issue 3 of B–N Service Bulletin Number SB 273.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

We did receive Issue 3 of B–N Service Bulletin Number SB 273. This service bulletin introduces the new design oleo attachment bracket described above. We have determined that the option to install this new design bracket should be incorporated into the AD. This installation will increase the time between repetitive inspection intervals (reduce the number of inspections).

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 126 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	No cost for parts	$180	$180 × 126 = $22,680

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$370	$720 + $370 = $1,090

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–02–11 Pilatus Britten-Norman LTD.: Amendment 39–12639; Docket No. 2001–CE–39–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all constructor numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked oleo attachment brackets. Such a condition could cause the attachment bracket to fail, which could result in detachment of the main landing gear.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, visually or using 10x magnifying glass, the oleo attachment brackets, part number (P/N) NB–40–0075, for cracks.	Within the next 25 hours time-in-service (TIS) or 50 landings, whichever occurs first, after March 25, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 500 hours TIS or 1200 landings, whichever occurs first.	In accordance with B–N Service Bulletin Number SB 273, Issue 3 dated December 5, 2001, and the applicable maintenance manual.
(2) Inspect visually or using 10x magnifying glass, the oleo attachment brackets, P/N NB–40–0479, for cracks.	Within the next 4 years after the date of installation or the next time the main landing gear is removed, whichever occurs first, after March 25, 2002 (the effective date of this AD), and repetitively inspect thereafter every time the main landing gear is removed or at intervals not to exceed 4 years, whichever occurs first.	In accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001, and the applicable maintenance manual.
(3) If cracks are found during any inspection required in paragraph (d)(1) or (d)(2) of this AD, replace the cracked oleo attachment bracket with another oleo attachment bracket, P/N NB–40–0075 or P/N NB–40–0479.	Prior to further fight after the inspection(s) required in paragraph (d)(1) and (d)(2) of this AD in which the crack is found. Repetitively inspect at the repetitive inspection intervals specified in paragraph (d)(1) or (d)(2) of this AD, whichever is applicable.	In accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001, and the applicable maintenance manual.
(4) Do not install any oleo attachment bracket, P/N NB–40–0075 or NB–40–0479 (or FAA-approved equivalent part number), unless it has been inspected as required in paragraph (d)(1) and (d)(2) of this AD and determined to be airworthy.	As of March 25, 2002 (the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B–N Service Bulletin Number SB 273, Issue 3, dated December 5, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in United Kingdom CAA AD 005–09–2000, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on March 25, 2002.

Issued in Kansas City, Missouri, on February 1, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2945 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–38–AD; Amendment 39–12638; AD 2002–02–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This AD requires you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks and replace any suspect bracket. This AD also requires you to replace the hinge bracket at a certain time period if no discrepancies are found. This replacement includes modifying this area and installing modified brackets. This replacement allows you to increase the time period between inspections (reduce the number of repetitive inspections). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

DATES: This AD becomes effective on March 25, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 25, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The United Kingdom CAA reports several instances where the inboard brackets of the elevator outboard hinge had loose rivets, structural damage, or cracks.

These inboard brackets of the elevator outboard hinge incorporate part number NB–31–0077.

What Is the Potential Impact if FAA Took No Action?

Loose rivets, structural damage, or cracks in the inboard brackets of the elevator outboard hinge, if not detected and corrected, could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 28, 2001 (66 FR 59378). The NPRM proposed to require you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; and replace the hinge bracket prior to further flight or at a certain time, depending on whether loose rivets, structural damage, or cracks are found during an inspection. This replacement includes modifying this area and installing modified brackets, part number NB–31–0901.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

Do not add any additional burden upon the public than was already proposed in the NPRM.

Are There Differences Between This AD, the Service Information, and the CAA AD?

This AD requires you to replace/modify the hinge bracket at a certain time period if no discrepancies are found to increase the time period between inspections (reduce the number of repetitive inspections). BN Bulletin Number BN2/SB 259 and CAA AD Number 002–07–2000 do not specify this provision; they both specify this replacement/modification only if a suspect bracket is found during an inspection. This provision of incorporating the replacement/modification regardless of whether a suspect bracket is found is consistent with FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to incorporating this replacement/modification would be to repetitively inspect this area every 100 hours time-in-service (TIS) for the life of the airplane instead of every 1,000 hours TIS.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 118 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour at $60 per hour = $60	No parts necessary to accomplish the inspection.	$60 per airplane	$7,080

We estimate the following costs to accomplish the replacement/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours at $60 per hour = $600	$240 per airplane	$840 per airplane	$99,120

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–02–10 Pilatus Britten Norman Ltd.: Amendment 39–12638; Docket No. 2001–CE–38–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes, all constructor numbers, that are certificated in any category and do not have one of the following incorporated:

(1) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour time-in-service (TIS) interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or

(2) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For airplanes that do not have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 installed in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901; and (iii) Comply with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	Initially inspect within the next 100 hours time-in-service (TIS) after March 25, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 100 hours TIS until the replacement/modification required by paragraph (d)(1)(ii) of this AD is accomplished. Do the replacement initially at whichever of the following occurs within 1,000 hours TIS after March 25, 2002 (the effective date of this AD) or prior to further flight when any loose of rivet, structural damage, or crack is found. Replace thereafter prior to further bulletin), flight after any loose rivet, structural accomplish the damage, or crack is found.	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.

Actions	Compliance	Procedures
(2) For airplanes that have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; and (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901.	Inspect within 1,000 hours TIS after incorporating the replacement/modification or within the 100 hours TIS after March 25, 2002 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS. Accomplish the replacement/modification prior to further flight when any loose rivet, structural damage, or crack is found during any inspection required by this AD.	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.
(3) This AD does not apply to airplanes with one of the following incorporated: (i) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour TIS interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or (ii) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes.	Not Applicable.	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in CAA AD Number 002–07–2000, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on March 25, 2002.

Issued in Kansas City, Missouri, on February 1, 2002.

Michael Gallagher,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2946 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–413–AD; Amendment 39–12652; AD 2002–03–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, repair, if necessary, and, for certain airplanes, prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of its attachment to the skin. This amendment adds repetitive ultrasonic inspections of the subject area, and repair, if necessary. It also adds installation of fasteners to reinforce the bonds to the skin, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the bonds of the vertical stabilizer spar boxes to the skin, which could lead to reduced structural integrity of the spar boxes.

DATES: Effective March 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2002.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of June 28, 2000 (65 FR 37029, June 13, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–11–27, amendment 39–11776 (65 FR 37029, June 13, 2000), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on September 4, 2001 (66 FR 46243). The action proposed to continue to require a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. For certain airplanes, the action also proposed to continue to require prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of its attachment to the skin. The action proposed to add repetitive ultrasonic inspections of the subject area, and repair, as necessary. It also proposed to add installation of fasteners to reinforce the bonds to the skin, which would terminate the repetitive inspections.

Comments

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

Remove Modification Number From Applicability Statement

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to remove the modification number from the applicability statement. The commenter notes that the referenced modification is not valid for production airplanes.

The FAA concurs with the commenter's request and has revised the applicability statement of this final rule accordingly. We find that this change does not expand the scope of the proposed AD but merely provides clarification by eliminating redundancy.

Give Credit for Fastener Installation per Other Service Information

One commenter requests that we revise the proposed AD to refer to Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, as an acceptable source of service information for accomplishment of the installation of fasteners specified in paragraph (f) of the proposed AD. Paragraph (f) of the proposed AD refers to Airbus Service Bulletin A320–55–1028, Revision 03, dated November 2, 2000, as the appropriate source of service information for the installation of new fasteners. The commenter states that no substantive procedural changes were made from Revision 02 to Revision 03 of the service bulletin, and no additional work is necessary for airplanes on which Revision 02 was accomplished. Revision 03 merely clarifies recommendations for repeat inspections if the modification is only partially accomplished.

We concur with the commenter's request for the reasons specified by the commenter. Also, since the issuance of the proposed AD, Airbus has issued Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001. The procedures in Revision 04 of the service bulletin are essentially the same as those in Revision 03. Therefore, we have revised paragraph (f) of this AD to specify that fastener installation must be accomplished in accordance with Airbus Service Bulletin A320–55–1028, Revision 04. Also, we have added a new note, Note 2, to this final rule and renumbered subsequent notes accordingly, to give credit for accomplishment of the installation of fasteners prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–55–1028, Revision 02 (based on the commenter's request), or Revision 03. We have also revised the applicability statement of this final rule to exclude airplanes on which Airbus Service Bulletin A320–55–1028, Revision 02, Revision 03, or Revision 04, has been accomplished, from the applicability of this AD. (The applicability statement of the proposed AD states that airplanes on which Airbus Service Bulletin A320–55–1028, Revision 03, has been accomplished are not subject to this AD.)

Request To Revise Proposed Compliance Time for Modification

The commenter requests that we revise the compliance time of paragraph (f) of the proposed AD to refer to ''5 years from the 'entry in service' of the airplane'' instead of ''5 years after the date of manufacture of the airplane.'' The commenter points out that the date of manufacture is the date of the first flight of the airplane, whereas the date of ''entry into service'' is the date of delivery of the airplane. The difference between these dates could be one month or more. The commenter recommends that we make this change to avoid operator questions.

We do not concur. For clarification, we define the ''date of manufacture'' as the date of issuance of the Certificate of Airworthiness. We find that this constitutes a definitive date when all of the manufacturing processes are completed. We have determined that this date should be readily discernible by operators, and no change to the final rule is necessary in this regard.

Explanation of Additional Changes to Final Rule

In addition to the changes described previously, several typographical errors have been corrected in this final rule.

Conclusion

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

Cost Impact

There are approximately 23 Model A319, A320, and A321 series airplanes of U.S. registry that will be affected by this AD.

The repetitive inspections in this AD will take approximately 3 to 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the repetitive inspections required by this AD is estimated to be $4,140 to $9,660, or $180 to $420 per airplane, per inspection cycle.

The installation of fasteners in this AD will take approximately 5 to 480 work hours per airplane to accomplish, depending upon the configuration of the airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the installation required in this AD is estimated to be $6,900 to $662,400, or $300 to $28,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11776 (65 FR 37029, June 13, 2000), and by adding a new airworthiness directive (AD), amendment 39–12652, to read as follows:

2002–03–11 Airbus Industrie: Amendment 39–12652. Docket 2000–NM–413–AD. Supersedes AD 2000–11–27, Amendment 39–11776.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–55A1027, dated May 13, 2000, Revision 01, dated August 1, 2000, or Revision 02, dated February 13, 2001; except those airplanes on which Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, Revision 03, dated November 2, 2000, or Revision 04, dated April 13, 2001; has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bonds of the vertical stabilizer spar box to the skin, which could lead to reduced structural integrity of the spar boxes, accomplish the following:

Restatement of Requirements of AD 2000–11–27

Ultrasonic Inspection

(a) Within 60 days after June 28, 2000 (the effective date of AD 2000–11–27, amendment 39–11776): Perform a one-time ultrasonic inspection to detect disbonding (damage) of the skin attachments at the stringers and spars of the vertical stabilizer, left- and right-hand sides, in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001.

Modification (for Certain Airplanes)

(b) For airplanes with manufacturer's serial numbers listed in paragraph B of the Planning Information of Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001: Prior to or concurrent with the ultrasonic inspection required by paragraph (a) of this AD, modify the vertical stabilizer to ensure proper reinforcement of the structure/skin attachments, in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999.

New Requirements of This AD

Repetitive Inspections and Repair, If Necessary

(c) Within 1,100 flight cycles from the previous inspection performed in accordance with paragraph (a) of this AD, or 60 days after the effective date of this AD, whichever occurs later: Perform an ultrasonic inspection to detect disbonding of the skin attachment at the spars and the stringers of the vertical stabilizer spar box, in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001.

(d) If no damage is detected, or if only a single area of damage is found and it is less than or equal to an area of 300 square millimeters (mm^2) during any ultrasonic inspection required by this AD, repeat the ultrasonic inspection thereafter at intervals not to exceed 1,100 flight cycles.

(e) If any damage is detected and the area of damage found is greater than 300 mm^2, or if multiple areas of damage are found on one specific component (stringer/spar attachment) during any ultrasonic inspection required by this AD, prior to further flight, accomplish applicable repairs in accordance with Airbus Service Bulletin A320–55A1027, dated May 13, 2000; Revision 01, dated August 1, 2000; or Revision 02, dated February 13, 2001. Repeat the ultrasonic inspection thereafter at intervals not to exceed 1,100 flight cycles.

Modification

(f) Within 5 years after the date of manufacture of the airplane: Install fasteners to reinforce the attachment between the skin panel and areas of the vertical stabilizer affected by disbonding, in accordance with Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001. Accomplishment of the installation terminates the repetitive inspections required by paragraph (c) of this AD.

Note 2: Installations accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–55–1028, Revision 02, dated July 26, 2000, or Revision 03, dated November 2, 2000, are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–11–27, amendment 39–11776, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(i) The actions shall be done in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999; Airbus Service Bulletin A320–55A1027, dated May 13, 2000, Airbus Service Bulletin A320–55A1027, Revision 01, dated August 1, 2000, or Airbus Service Bulletin A320–55A1027, Revision 02, dated February 13, 2001; and Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001.

(1) The incorporation by reference of Airbus Service Bulletin A320–55A1027, Revision 01, dated August 1, 2000; Airbus Service Bulletin A320–55A1027, Revision 02, dated February 13, 2001; and Airbus Service Bulletin A320–55–1028, Revision 04, dated April 13, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999; and Airbus Service Bulletin A320–55A1027, dated May 13, 2000; was approved previously by the Director of the Federal Register as of June 28, 2000 (65 FR 37029, June 13, 2000).

(3) Copies may be obtained from Airbus Industrie, 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–520–159(B), dated December 13, 2000.

Effective Date

(j) This amendment becomes effective on March 19, 2002.

Issued in Renton, Washington, on February 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3455 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. FHWA–2001–10077]

RIN 2125–AE89

Design Standards for Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA revises its policy on the design standards that apply to highway construction and reconstruction projects on the National Highway System (NHS). The previous standards were the 1994 version of the American Association of State Highway and Transportation Officials' (AASHTO) publication, ''A Policy on Geometric Design of Highways and Streets.'' A 2001 revision of this publication has replaced the 1994 version and FHWA adopts this new version as its policy on design standards for highway construction and reconstruction projects on the NHS.

DATES: This final rule is effective March 14, 2002. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of March 14, 2002.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Seppo Sillan, Office of Program Administration (HIPA), (202) 366–1327. *For legal information:* Mr. Harold Aikens, Office of the Chief Counsel (HCC–40), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This final rule is based on the FHWA's notice of proposed rulemaking (NPRM), FHWA Docket No. FHWA–2001–10077, Design Standards for Highways, at 66 FR 48103 (September 18, 2001). All comments received in response to the NPRM have been considered in adopting this final rule. For discussion of comments, see the section entitled ''Discussion of Comments'' later in this final rule.

Electronic Access and Filing

This document, the NPRM, and all comments received may be viewed online through the Document Management System (DMS) at: *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov.*

The current design standards are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying at the FHWA Washington, DC, Headquarters and field offices as prescribed in 49 CFR part 7. Copies of the current AASHTO publications are also available for purchase from AASHTO by telephone (800) 231–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716 or at its Web site at *www.transportation.org.*

Background

The standards, policies, and standard specifications that have been approved by the FHWA for application on all construction and reconstruction projects on the NHS are incorporated by reference in 23 CFR part 625. The current document specified in § 625.4(a)(1) is the 1994 edition of ''A Policy on Geometric Design of Highways and Streets'' (Policy).[1] The AASHTO recently revised the Policy and issued the 2001 edition which the FHWA is adopting as its policy for design standards for all construction and reconstruction projects on the NHS. The primary reason for development of the new document was to update the previous Policy to incorporate the latest design criteria. See ''Summary of Changes'' below for a description of the changes made in the 2001 edition.

The AASHTO is an organization which represents 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those agencies. The Secretary of Transportation is an ex officio member, and U.S. DOT officials participate in various AASHTO activities as nonvoting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides and

[1] A Policy on Geometic Design of Highways and Streets, 1994, is available from AASHTO by telephone (800) 321–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716 or at their Web site at *www.transportation.org.*

related materials for use by the States for highway projects. Many of the standards, policies, and standard specifications approved by the FHWA and incorporated into 23 CFR part 625 were developed and issued by the AASHTO. Revisions to such documents of the AASHTO are independently reviewed and adopted by the FHWA before they are applied to NHS projects.

The National Highway System (NHS) was established by the National Highway System Designation Act of 1995, Public Law 104–59, Nov. 28, 1995, 109 Stat. 568. The NHS includes the Interstate System and other principal arterials serving major travel destinations and transportation needs, connectors to major transportation terminals, the Strategic Highway Network and connectors, and high priority corridors identified by law.

Generally, the criteria in the functional chapters of the Policy on local roads and streets and collectors (Chapters 5 and 6) are not applicable to projects on the NHS. However, if highway segments functionally classified as less than principal arterials are incorporated in the NHS by virtue of being Strategic Highway Network Connectors or Intermodal Connectors, the standards used may be those appropriate for the functional classification of the segment, taking into account the type of traffic using the segment.

Although the standards contained in the Policy apply to the Interstate System, additional guidance applicable to the design of highways on the Interstate System is included in another AASHTO publication, ''A Policy on Design Standards—Interstate System.'' [2] The latest edition of this publication is dated July 1991; no revisions to this document are proposed at this time.

Summary of Changes

The changes in the 2001 Policy were developed as the result of formal research projects and information contributed by the AASHTO and the FHWA staff experts. The changes included such items as the criteria for stopping sight distance, height of eye and height of object for measuring sight distance, transition design controls, and intersection sight distance. The NPRM cited earlier in this section should be consulted for a more complete description of the changes.

[2] A Policy on Design Standards—Interstate System, 1991, is available from AASHTO (see footnote 1).

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written or electronic comments on the NPRM to FHWA Docket No. FHWA–2001–10077 on or before November 19, 2001. The FHWA received two comments to the docket. Both comments were from State DOT's. One commenter feels that ''A Policy on Design Standards—Interstate System'' (Interstate Policy) should be eliminated so that the engineer/designer only has to refer to one document. As mentioned under the caption **SUPPLEMENTARY INFORMATION** although the standards contained in the Policy apply to the Interstate System, additional standards applicable to the design of highways on the Interstate System are included separately in the Interstate Policy. The FHWA believes these additional standards are necessary and that the Interstate Policy cannot be eliminated. However, in the future, the two publications could be merged by including the standards in the Interstate Policy under a separate heading or chapter in the Policy. Both the FHWA and this commenter will be a party to future revisions of the Policy so inclusion of the Interstate Policy can be addressed at that time. The other commenter agreed with the changes and recommended that the FHWA adopt the new Policy.

Rulemaking Analyses and Notices

In response to the FHWA solicitation of public comment on this action, we received two comments. These comments have been considered in evaluating whether any change to this action is needed. The FHWA determines that no change is required.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. Although the new Policy has been revised to incorporate the latest research, the basic criteria remain essentially the same. These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, although the new Policy has been revised to incorporate the latest research, the basic criteria remain essentially the same. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). 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 (2 U.S.C. 1531 *et seq*).

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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.

Executive Order 13045 (Protection of Children)

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

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation

of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

Issued on: February 4, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 625, as set forth below:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1.The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48(b) and (n).

2. In § 625.4, revise paragraph (a)(1) to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(a) * * * (1) A Policy on Geometric Design of Highways and Streets, AASHTO 2001. [See § 625.4(d)(1)]

* * * * *

[FR Doc. 02–3217 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–003–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), approve, with certain exceptions, a proposed amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to Title 26, Chapter 4, Subchapters 3 through 12 of the Administrative Rules of Montana (ARM). Montana revised its program to be consistent with the corresponding Federal regulations, incorporate additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 E. B Street, Room 2128; Casper, WY 82601–1918; Telephone: (307) 261–6550, Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letters dated February 1, 1995, and February 28, 1995, Montana sent us an amendment to its program (Administrative Record Nos. MT–12–01 and MT–12–05) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to letters dated July 2, 1985, May 11, 1989, and March 29, 1990 (Administrative Record Nos.

MT–60–01, MT–60–04, and MT–60–07) that we sent to Montana in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 926.16(b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), (e)(8), (f), (h), (i), and (j); and at its own initiative. Montana proposed changes to: ARM 26.4.301, definitions; ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.308, operations plan; ARM 26.4.314, plan for protection of the hydrologic balance; ARM 26.4.321, transportation facilities plan; ARM 26.4.404, review of application; ARM 26.4.405, findings and notice of decision; ARM 26.4.405A, improvidently issued permits: general requirements; ARM 26.4.405B, improvidently issued permits: revocation; ARM 26.4.407, conditions of permit; ARM 26.4.410, permit renewal; ARM 26.4.501A, final grading requirements; ARM 26.4.505, burial and treatment of waste materials; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.524, signs and markers; ARM 26.4.601, general requirements for road and railroad loop construction; ARM 26.4.602, location of roads and railroad loops; ARM 26.4.603, embankments; ARM 26.4.605, hydrologic impacts of roads and railroad loops; ARM 26.4.623, blasting schedule; ARM 26.4.633, water quality performance standards; ARM 26.4.634, reclamation of drainages; ARM 26.4.638, sediment control measures; ARM 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.642, permanent and temporary impoundments; ARM 26.4.645, groundwater monitoring; ARM 26.4.646, surface water monitoring; ARM 26.4.702, redistribution and stockpiling of soil; ARM 26.4.711, establishment of vegetation; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.724, use of revegetation comparison standards; ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.825, alternate reclamation: alternate revegetation; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.930, placement and disposal of coal processing waste: special application requirements; ARM 26.4.932, disposal of coal processing waste; ARM 26.4.1001, application requirements; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1002, information and monthly reports; ARM 26.4.1005, drill holes; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1007, grading, soil salvage, storage, and redistribution; ARM 26.4.1009, diversions; ARM 26.4.1011, hydrologic balance; ARM 26.4.1014, test pits: application requirements, review procedures, bonding, and additional performance standards; ARM 26.4.1116, bonding: criteria and schedule for release of bond; ARM 26.4.1116A, reassertion of jurisdiction; ARM 26.4.1141, designation of lands unsuitable: definition; ARM 26.4.1206, notices, orders of abatement and cessation orders: issuance and service; and ARM 26.4.1212, point system for civil penalties and waivers.

We announced receipt of the proposed amendment in the March 15, 1995, **Federal Register** (60 FR 13932; Administrative Record No. MT–12–12). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 14, 1995. We received responses from six federal agencies and one citizen group.

During our review of the amendment, we identified the rules requiring clarification prior to making an evaluation of the proposed revisions. Those rules requiring clarification were: ARM 26.4.301(78), the definition of ''owned or controlled;'' ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.314, plan for the protection of the hydrologic balance; ARM 26.4.404, review of application; ARM 26.4.407, conditions of a permit; ARM 26.4.410, permit renewal; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of offsite-generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.603 and 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.645 and 26.4.646, groundwater and surface water monitoring; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.1001, permit requirement; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1009, diversions; and 26.4.1014, prospecting.

We notified Montana of those rules requiring clarification by letter dated October 17, 1995 (Administrative Record No. MT–12–16). Montana responded with further explanation in a letter dated February 6, 1996 (Administrative Record No. MT–12–19). Following receipt of Montana's February 6, 1996, letter, we identified concerns with ARM 26.4.304, baseline information: environmental resources; ARM 26.4.404, review of application; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of off-site generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.639, sediment ponds and other treatment facilities; ARM 26.4.821, alternate reclamation; ARM 26.4.924 and 26.4.927, disposal of underground development waste; and ARM 26.4.1014, prospecting. We notified Montana of these concerns by letter dated July 10, 1997 (Administrative Record No. MT–12–20).

Meanwhile, at the same time we were reviewing this amendment, Montana made subsequent changes to some of the rules contained in this amendment and submitted them in another amendment dated March 5, 1996 (SPATS No. MT–018–FOR; Administrative Record No. MT–15–01). Those rules were: ARM 26.4.410, permit renewal, ARM 26.4.1001, prospecting permit requirement; and ARM 26.4.1001A, notice of intent to prospect. OSM and Montana subsequently decided to withdraw the prospecting and permit renewal rules from SPATS No. MT–003–FOR and consider them in SPATS No. MT–018–FOR (Administrative Record Nos. MT–12–21 and MT–15–14). These withdrawn rules addressed the required program amendments at 30 CFR 926.16(f), (h), (i), and (j).

Concerning this amendment, Montana responded by letter dated July 17, 2000 (Administrative Record No. MT–12–23), that it would not submit further revisions to this amendment. Montana requested that OSM proceed with the final rule **Federal Register** notice. Montana stated that it would address the existing deficiencies in this amendment in a new submission. OSM then proceeded writing the final rule **Federal Register** notice on SPATS No. MT–003–FOR.

However, during the writing of the final rule, OSM decided to request a meeting with Montana to discuss the unresolved issues in MT–003–FOR. The meeting was held at the Montana Department of Environmental Quality (DEQ), Helena, Montana, on February 27, 2001. During the meeting, OSM and the Montana DEQ decided that some

issues were, in fact, resolvable due to a re-interpretation of Montana's responses and/or a subsequent revision of Montana's rules.

As a result of the February 2001, meeting, Montana submitted revisions and/or additional explanatory information by letter dated May 15, 2001 (Administrative Record No. MT–12–25). Montana submitted additional explanatory information concerning the lack of acid-forming materials in the Montana coal fields to address the issue with ARM 26.4.304(6)(b)(ii)(B). Montana proposed editorial changes to ARM 26.4.407(4). Montana proposed new language at ARM 26.4.505(5) to prohibit acid, acid-forming, toxic, or toxic-forming wastes from being used in an impoundment. Montana proposed new language at ARM 26.4.505(7) to provide that the same notification requirements concerning potential hazards at waste disposal sites also pertain to temporary waste impoundments. Montana proposed new language at ARM 26.4.639 to address the construction of a single spillway and to state that an excavation requires no spillway. Montana proposed to delete the subsection at ARM 26.4.924(15) which OSM disapproved in the August 19, 1992, **Federal Register** notice, and to delete cross-reference to it at ARM 26.4.927(3)(a). This deletion is a partial response to a required program amendment which OSM put on the Montana program on August 19, 1992 at 30 CFR 926.16(e)(9).

We announced receipt of the proposed amendment in the June 1, 2001, **Federal Register** (66 FR 29741). In the same document, we reopened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–12–28). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 2, 2001. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with the exceptions as described below.

A. Minor Revisions to Montana's Rules

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

26.4.301, ARM, subsections (79) through (119), (121) through (133), and (135) through (137), (30 CFR 701.5), definitions;

26.4.407, ARM, subsections (1) and (2), (30 CFR 773.17), conditions of permit;

26.4.601, ARM, subsection (7), (30 CFR 816.150/817.150), general requirements for road and railroad loop construction;

26.4.639, ARM, subsection (18)(c), (30 CFR 816.49/817.49), sedimentation ponds and other treatment facilities;

26.4.711, ARM, subsections (2), (3), (4), and (5), (30 CFR 816.111/817.111 and 816.116/817.116), establishment of vegetation;

26.4.924, ARM, subsections (5), (10) through (14), (16), (17), (18), and (20); (30 CFR 816.71/817.71, 816.81/817.81, and 816.83/817.83), disposal of underground development waste: general requirements;

26.4.1005, ARM, subsection (2); (30 CFR 815.15(i) and 816.41(a)/817.41(a)), drill holes;

26.4.1006, ARM, subsection (1); (30 CFR 816.150/817.150, 816.180/817.180, and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM subsection (2); (30 CFR 815.15(d)), grading, soil salvage, storage, and redistribution; and

26.4.1009, ARM, subsection (1); (30 CFR 816.43/817.43), diversions.

Because these changes are minor and nonsubstantive, we find that they will not make Montana's rules less effective than the corresponding Federal regulations.

B. Revisions to Montana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Montana proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

26.4.304, ARM, subsection (6)(a)(iii), (30 CFR 780.21/784.14), baseline information: environmental resources;

26.4.308, ARM, subsection (2), (30 CFR 780.11/784.11 and 780.37/784.24), operations plan;

26.4.314, ARM, subsection (3), (SMCRA section 510(b) and 30 CFR 780.21/784.14), plan for protection of the hydrologic balance;

26.4.405, ARM, subsections (6) and (8), (30 CFR 773.15), findings and notice of decision;

26.4.501A, ARM, subsection (3)(a), (30 CFR 816.101/817.101), final grading requirements;

26.4.524, ARM, subsection (2), (30 CFR 816.11/817.11), signs and markers;

26.4.601, ARM, subsection (5), (30 CFR 816.151(a)(1)/817.151(a)(1)), general requirements for road and railroad loop construction;

26.4.602, ARM, subsection (2), (30 CFR 816.151/817.151 and 30 CFR 780.37/784.24), location of roads and railroad loops;

26.4.603, ARM, Introduction and subsection (9), (30 CFR 816.49/817.49), embankments;

26.4.605, ARM, subsection (3)(a)(i), (30 CFR 816.151/817.151), hydrologic impact of roads and railroad loops;

26.4.623, ARM, subsection (2)(b)(iii), (30 CFR 816.64/817.64), blasting schedule;

26.4.633, ARM, subsection (2), (30 CFR 816.46/817.46), water quality performance standards;

26.4.634, ARM, subsections (1) and (2), (30 CFR 816.102 / 817.102), reclamation of drainages;

26.4.638, ARM, subsection (2)(a), (30 CFR 816.45(b)(1)/817.45(b)(1)), sediment control measures;

26.4.639, ARM, subsections (1), (10)(c), and (18), Introduction, (30 CFR 816.46(b)(4) and (c)(2)/817.46(b)(4) and (c)(2), and 30 CFR 816.49(a)(2) and (a)(11)/817.49(a)(2) and (a)(11)), sedimentation ponds and other treatment facilities;

26.4.642, ARM, subsections (5) and (8), (30 CFR 816.49/817.49 and 816.84/817.84), permanent and temporary impoundments;

26.4.702, ARM, subsection (4), (30 CFR 780.23(a)(2)/784.15(a)(2)), redistribution and stockpiling of soil;

26.4.711, ARM, subsection (6), (30 CFR 816.116/817.116), establishment of vegetation;

26.4.927, ARM, subsection (2)(c), (30 CFR 816.71/817.73), disposal of underground development waste: durable rock fills;

26.4.932, ARM, subsection (8)(a)(ii), (30 CFR 816.81(a)/817.81(a) and 816.83/817.83), disposal of coal processing waste;

26.4.1002, ARM, subsections (1) and (2), (30 CFR 815.1 and 816.10/817.10), information and monthly reports;

26.4.1005, ARM, subsection (3), (30 CFR 815.15(g)), drill holes;

26.4.1006, ARM, subsections (2) through (4), (30 CFR 815.15, 816.150/817.150, 816.180/817.180 and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM, subsection (1), (30 CFR 815.15(c)), grading, soil salvage, storage, and redistribution;

26.4.1009, ARM, subsection (2), (30 CFR 816.43/817.43), diversions;

26.4.1011, ARM, subsection (1), (30 CFR 772.11, 772.12, 772.13 and 815.15), hydrologic balance;

26.4.1116, ARM, subsection (7)(c), (30 CFR 800.40), bonding: criteria and schedule for release of bond;

26.4.1116A, ARM, subsections (1) and (2), (30 CFR 700.11), reassertion of jurisdiction;

26.4.1141, ARM, subsection (3), (30 CFR 762.5), designation of lands unsuitable: definition;

26.4.1212, ARM, subsection (1), (30 CFR 845.13(b)(1)), point system for civil penalties and waivers.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. ARM 26.4.301(78), 26.4.303, 26.4.404(7) Through (10), 26.4.405(5), 26.4.405A, 26.4.405B, and 26.4.1206(1); Ownership and Control

Montana proposed numerous revisions to its regulatory program concerning ownership and control. These revisions were submitted in response to two Part 732 letters sent to Montana by OSM on May 11, 1989 and January 13, 1997 (Administrative Record Nos. MT–60–04 and MT–60–09). Many of these revisions were found to be no less effective than the corresponding Federal regulations. However, during the evaluation of SPATS No. MT–003–FOR, OSM again revised its ownership and control regulations in response to recent legal challenges contesting the validity of OSM's regulations. The final rule **Federal Register** notice concerning OSM's revised regulations was published on December 19, 2000 (65 FR 79582). In the future, OSM will send a current Part 732 letter to all States, according to the requirements of 30 CFR 732.17(d), to advise the States of ownership and control revisions which they need to make to their State regulatory program. Therefore, at this time, OSM defers on Montana's proposed revisions concerning ownership and control. The sections of the Administrative Rules of Montana (ARM) where a decision is being deferred, are: ARM 26.4.301(78); 26.4.303 Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B; and 26.4.1206(1).

D. ARM 26.4.301(120), Definition of ''Test Pit''

OSM placed a required program amendment (30 CFR 926.16(b)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise the definition of ''test pit'' to eliminate the phrase ''or for the purpose of developing a test market.'' OSM placed the required program amendment on the Montana program as the Federal counterpart regulations for coal exploration at 30 CFR 772.14(b) allow for the extraction of more than 250 tons of coal under an exploration permit if the coal is intended for testing purposes only. There is no Federal provision for using coal extracted under an exploration permit for developing a market.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a revision at ARM 26.4.301(120) to revise the definition of ''test pit'' to delete the phrase ''or for the purpose of developing a test market.'' Therefore, the Director finds the Montana revised rule to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(b).

E. ARM 26.4.304(5), (6)(a), and (6)(b), Baseline Information: Environmental Resources

Montana proposed to move the requirements for groundwater baseline information from ARM 26.4.304(5) to revised ARM 26.4.304(6)(a)(ii), and to revise the surface water baseline information requirements at ARM 26.4.304(6)(b)(ii)(B). Montana proposed to delete from ARM 26.4.304(6)(a)(ii) and 26.4.304(6)(b)(ii)(B), the need to provide baseline information for ''total iron and total manganese,'' and to add the requirement that the applicant provide baseline information for both surface and groundwater concerning ''concentrations of dissolved metals as prescribed by the department.'' In addition, Montana proposed to delete from ARM 26.4.304(6)(b)(ii)(B) the requirement for surface water baseline information concerning acidity and alkalinity.

The Federal regulations at 30 CFR 780.21(b)(1) and (2)/784.14(b)(1) and (2) concerning baseline information for surface water and groundwater information require: (1) Total iron and total manganese, and (2) acidity and alkalinity, if there is a potential for acid drainage from the proposed mining operation. The Federal regulation at 30 CFR 732.15(a) requires the States to provide program elements that are in accordance with the provisions of SMCRA and consistent with the requirements of the Federal regulations.

In the February 6, 1996, response (Administrative Record No. MT–12–18), Montana stated that OSM's requirements for total iron, total manganese, and acidity analyses are based upon eastern U.S. problems and do not typically relate to areas where coal mining operations currently exist in Montana with a predominance of alkaline conditions. OSM had requested in the October 17, 1995, and July 10, 1997, letters that Montana provide documentation supporting Montana's characterization of alkaline coal fields, such as a compilation of historic surface-water and overburden sampling information from coal mining permits, or geological reports of analyses conducted over the coal mining regions of Montana in order to approve the proposed deletion of total iron, total manganese, acidity and alkalinity as parameters for surface water baseline information (Administrative Record Nos. MT–12–16 and MT–12–20).

Montana did not initially provide such documentation but responded by letter dated February 6, 1996, that: (1) OSM's requirements for iron, manganese, alkalinity and acidity are based upon eastern U.S. problems and Montana conditions are alkaline; (2) Montana has the authority at ARM 26.4.304(5)(a)(ii) and (b)(ii)(B), and ARM 26.4.304(5)(d) to request additional analyses as needed; (3) Montana's Water Resource Guidelines, currently being revised, provide guidance for water analyses; and (4) OSM could impose additional analyses on Federal lands permits when they are reviewed, if OSM believes additional water analyses are needed (Administrative Record No. MT–12–19).

Following the meeting in Helena, Montana, on February 27, 2001, Montana submitted a letter dated May 15, 2001, containing surface water quality data documenting alkaline conditions at five mine areas in Montana (Administrative Record No. MT–12–25). This documentation is representative of surface conditions in Montana. With this information, OSM can approve Montana's proposed deletions to groundwater baseline information and surface water baseline information, as no less effective than the Federal regulations. The Director approves these revisions.

F. ARM 26.4.314(5), Protection of the Hydrologic Balance

At ARM 26.4.314(5), Montana proposed to delete the word ''probable'' from the requirement to provide an assessment of the ''probable cumulative hydrological impacts.'' As both SMCRA section 510(b)(3) and 30 CFR 780.21(g)(1)/784.14(g)(1) require that an applicant provide an assessment of the ''probable cumulative hydrologic impacts'' of the proposed operation, OSM requested that Montana explain the deletion of the term ''probable.'' Montana responded that the term ''probable cumulative hydrologic

impacts'' is undefined in the Montana rules, while ''cumulative hydrologic impacts'' is defined. Montana further stated that ''cumulative hydrologic impacts'' in the Montana program includes ''expected'' impacts, which has the same connotation as ''probable.'' With this explanation, the Director approves the proposed revision to ARM 26.4.314(5) as no less effective than the Federal regulation and no less stringent than SMCRA.

G. ARM 26.4.321(1) and (3), Transportation Facilities Plan

OSM placed required program amendments (30 CFR 926.16(e)(3) and (e)(4)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436). The required program amendment at 30 CFR 926.16(e)(3) required Montana to modify its program to specify certification content requirements no less effective than 30 CFR 780.37(b)/784.24(b). The required program amendment at 30 CFR 926.16(e)(4) required Montana to incorporate application requirements no less effective than 30 CFR 780.37(a)(2), (3), and (6)/784.24(a)(2), (3), and (6). OSM placed the required program amendments on the Montana program as the revisions proposed in the June 19, 1990, submittal (Administrative Record No. MT–7–01) did not address these Federal counterpart provisions.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana subsequently proposed rule revisions at ARM 26.4.321 which addressed the certification content requirements and application requirements for the mining operations and reclamation plan portions of applications for permits for both surface and underground mining activities. OSM found that these Montana ARM revisions addressed earlier programmatic deficiencies identified at 30 CFR 926.16(e)(3) and (e)(4). Therefore, the Director finds the Montana revised rules to be no less effective than the Federal requirements and approves the proposed language. The Director removes the required program amendments at 30 CFR 926.16(e)(3) and (e)(4).

H. ARM 26.4.404(5)(b), Review of Application: Properties Listed on or Eligible for Listing on the National Register of Historic Properties

OSM placed a required program amendment (30 CFR 926.16(c)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise ARM 26.4.404(5)(b) to require that a determination of effects is completed for all properties listed on or eligible for listing on the National Register of Historic Properties (NRHP). OSM placed the required program amendment on the Montana program as the proposed revision to ARM 26.4.404(5)(b) applied to ''all listed eligible cultural resource sites'' rather than to ''properties listed on or eligible for listing on the NRHP,'' as required by the Federal regulation at 30 CFR 773.15(c)(11).

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana revised ARM 26.4.404(5)(b) to read ''all listed or eligible cultural resource sites in accordance with 30 CFR 800.'' 36 CFR 800 applies to the Advisory Council on Historic Preservation and properties listed on or eligible for listing on the NRHP. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(c).

I. ARM 26.4.405(6)(1), Findings and Notice of Decision

OSM placed a required program amendment (30 CFR 926.16(d)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to change the cross-reference at ARM 26.4.405(6)(l) to ARM 26.4.1302, which governs the use of existing structures, rather than deleted rule ARM 26.4.309. In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a rule revision correcting the incorrect cross-reference to ARM 26.4.1302. Therefore, the Director finds the revised rule at ARM 26.4.405(6)(l) to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(d).

J. ARM 26.4.407(4), Conditions of Permit

At ARM 26.4.407(4), Montana proposed to require as a condition of each permit that a permittee, within 30 days of issuance of a cessation order under the Federal or State program, must provide the department with certain specified information except ''where a state cessation order is granted and remains in effect.'' The Federal counterpart at 30 CFR 773.17(i) is similar to Montana's proposal except that the Federal provision allows an exception to the applicable requirement only ''where a stay of a cessation order has been granted and remains in effect.''

In response to OSM's comment in the formal issue letter dated October 17, 1995 (Administrative Record No. MT–12–16) that Montana needed to revise ARM 26.4.407(4) to allow an exception to the requirements of the rule only where ''a stay of a cessation order has been granted and is in effect,'' Montana stated that the typographical error would be corrected (Administrative Record No. MT–12–19). By letter dated May 25, 2001, Montana submitted a revision to OSM which corrected the typographical error at ARM 26.4.407(4) to read ''a stay of the cessation order has been granted'' (Administrative Record No. MT–12–25). With this information, the Director finds ARM 26.4.407(4) to be no less effective than the Federal counterpart and approves the revision.

K. ARM 26.4.505(4) Through (8), Burial and Treatment of Waste Materials and Disposal of Off-Site-Generated Waste and Fly Ash

a. Burial and Treatment of Waste Materials

Montana proposed revisions at ARM 26.4.505 in response to a requirement which OSM codified at 30 CFR 926.16(e)(2) to incorporate requirements for the disposal of waste, including coal mine waste on strip mines, in a manner no less effective than the requirements at 30 CFR 816.102(e)/817.102(e) and 816.81/817.81 through 816.84/817.84. OSM placed the required program amendment on the Montana program as the revised definition of ''waste'' at ARM 26.4.301(132), now (133), included coal processing waste to be disposed of on surface mining operations which are governed by ARM 26.4.505 and 26.4.510. However, ARM 26.4.505 and 26.4.510 regulate surface mining operations; coal processing waste is not addressed at these rules. Existing language and proposed revisions at ARM 26.4.505(3) and (4) prohibit waste disposal in the construction of embankments for impoundments and in a waste disposal structure located on the surface of the ground. Therefore, the requirements of 30 CFR 816.84(a)/817.84(a) pertaining to impounding structures constructed of coal mine waste and the requirements of 30 CFR 816.83/817.83 for disposal of coal mine waste in refuse piles, are not addressed in the Montana program at 26.4.505 and 26.4.510. The Federal regulations require that any disposal of coal mine waste, whether in impounding structures or in excavated areas of strip mines, must meet the general requirements of 30 CFR 816.102(e)/817.102(e) and 816.81/817.81.

OSM told Montana in its October 17, 1995, letter (Administrative Record No. MT–12–16) that in order to be no less effective than the Federal regulations, Montana must revise ARM 26.4.505 to

include the following requirements: (1) Waste should be hauled or conveyed and placed in controlled manner to achieve the purposes itemized in 30 CFR 816.81(a)(1) through (5)/817.81(a)(1) through (5); (2) design and design certification, and foundation and abutment stability under all conditions of construction, should be in accordance with 30 CFR 816.81(c)/817.81(c); and (3) foundation investigations should be in accordance with 30 CFR 816.81(d)/817.81(d).

Montana responded in a letter dated February 6, 1996 (Administrative Record No. MT–12–19), stating that waste disposal in structures outside of mine excavations is prohibited at surface mines in Montana's program, and that Montana has the necessary requirements for underground mines. Montana has no coal preparation plants. Therefore, the disposal of coal processing waste in structures outside of mine excavations does not need to be addressed in the Montana program. Montana desires to dispose of coal processing waste in excavation pits.

There are no Federal regulations prohibiting the disposal of coal processing waste in excavation pits. Therefore, the Montana proposed rules are not inconsistent with the Federal regulations and the Director approves the proposed Montana revisions at ARM 26.4.505 and 26.4.510. The Director removes the required program amendment at 30 CFR 926.26(e)(2).

b. Temporary Waste Impoundments

During the review of proposed ARM 26.4.505(5), OSM identified deficiencies relating to the lack of: (1) a requirement that any temporary impoundment of waste which includes coal mine waste must meet the general requirements of ARM 26.4.505, in addition to those specified in paragraph (5); (2) a requirement for adequate protection against erosion and corrosion for outlet works; (3) a requirement that the diversion of runoff from above or off of the impounding structure be in accordance with 30 CFR 816.84(d)/817.84(d); and (4) a requirement for design and performance criteria for removal of 90 percent of the water stored during the design event within the 10 day period following the event in accordance with 30 CFR 816.84(e) and (f)/817.84(e) and (f) (Administrative Record No. MT–12–16).

Montana responded to OSM's deficiency list by: (1) Stating that paragraph (2) also pertains to coal waste impoundments and that Montana will add another subsection to (5) indicating that acid, toxic, acid-forming, and toxic-forming wastes may not be included in temporary waste impoundments; (2) stating that Montana will add the term ''outlet works'' to (5)(c); and (3) referencing sections in the State program which correspond to 30 CFR 816.84(d), (e), and (f)/817.84(d), (e), and (f) (Administrative Record No. MT–12–19).

OSM responded to Montana by letter dated July 10, 1997, stating that: (1) ARM 26.4.505(7) needed to be cross-referenced under ARM 26.4.505(5) to assure that emergency procedures would apply to temporary impoundments; and (2) Montana's proposal to rewrite ARM 26.4.505 to prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments would assure that its program is no less effective than the Federal regulations.

Following OSM's meeting with Montana on February 27, 2001, Montana submitted the proposed revisions at ARM 26.4.505(5)(c) through (5)(e) and (7) to OSM by letter dated May 15, 2001 (Administrative Record No. MT–12–25). The proposed revisions assure that emergency procedures would apply to temporary impoundments and would prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments. The Director, therefore, finds that the deficiencies at ARM 26.4.505 have been addressed and Montana's proposed revisions are no less effective than the Federal counterpart regulations. The Director approves revised ARM 26.4.505.

c. Disposal of Offsite-Generated Waste and Fly Ash

During the review of the burial and treatment of waste materials (at Finding No. 11a above), OSM raised an issue concerning the impact of the revisions at ARM 26.4.505. ARM 26.4.505 is cross-referenced at ARM 26.4.510(1) for the disposal of offsite-generated waste and fly ash. OSM's concern was that the requirements of 30 CFR 816.81(b)/817.81(b), which require that coal mine waste material from activities located outside a permit area may be disposed of in the permit area—if it is done with the approval of the regulatory authority—based upon a showing that the disposal would be in accordance with the standards of 30 CFR 816.81(b)/817.81(b), would not be met. However, with the resolution of Finding No. 11a above, OSM believes that the concerns with ARM 26.4.505 and 26.4.510 are resolved as they relate to the disposal of coal mine waste material from activities located outside a permit area.

L. ARM 26.4.519A, Thick Overburden and Excess Spoil

Montana proposed to delete at ARM 26.4.519A the requirement that all highwalls and depressions in thick overburden must be eliminated with spoil and suitable waste materials unless otherwise approved by the Montana DEQ in accordance with ARM 26.4.313(3) and 26.4.821 through 26.4.824. The Federal counterpart requirement to eliminate highwalls and depressions is contained at 30 CFR 816.102(a)(2)/817.102(a)(2). The deleted Montana cross-references concern the reclamation plan and Montana's programmatic allowance for alternate reclamation.

The general programmatic requirement to eliminate all highwalls and depressions used to be contained in the Montana program at ARM 26.4.501A(1). However, in 1999, this programmatic requirement was deleted from the Montana program by the State legislature. OSM has not received the revised Montana rules to evaluate if this requirement is contained elsewhere in the revised program, particularly in light of the proposed deletion at ARM 26.4.519A. Therefore, at this time, the Director defers on the proposed deletion at ARM 26.4.519A until a current rulemaking is submitted by Montana and evaluated by OSM.

M. ARM 26.4.603(9) and 26.4.639(18)(b), Sedimentation Ponds and Other Treatment Facilities; Construction of Sedimentation Ponds Which Meet the Criteria of 30 CFR 77.216A

Montana proposed at ARM 26.4.639(18) to delete the 1.2 seismic safety factor and 1.5 static safety factor requirements for sedimentation ponds that meet the criteria of 30 CFR 77.216(a). At ARM 26.4.603(9), Montana proposed to add 1.2 seismic safety factor and 1.5 static safety factor requirements for the construction of all embankments. The Federal requirement at 30 CFR 816.49(a)(3)(i)/817.49(a)(3)(i) specifies that for all temporary or permanent impoundments (including sedimentation ponds) that meet the criteria of 30 CFR 77.216(a), a 1.2 seismic safety factor and 1.5 static safety factor must be achieved.

Because ARM 26.4.642(2) references ARM 26.4.603, and because a sedimentation pond is defined as an ''impoundment'' in ARM 26.4.301, OSM asked Montana if ARM 26.4.603(9) would apply to all sedimentation ponds and impoundments, regardless of size and temporal nature. In the February 6, 1996, letter, Montana responded that OSM's interpretation was correct in that

ARM 26.4.603(9) applies to all sedimentation ponds regardless of size or nature (Administrative Record No. MT–12–19). With this explanation, the Director approves the revisions at ARM 26.4.639(18)(b) and 26.4.603(9) as no less effective than the Federal regulations.

N. ARM 26.4.639(10)(b) and (19), Sedimentation Ponds and Other Treatment Facilities: Construction of Sedimentation Ponds and Certification of Impoundments

a. Types of Materials Used for Spillways and Limits on the Duration of Spillway Discharges

At ARM 26.4.639(10)(a), Montana proposed to allow sedimentation ponds to be constructed with either a ''single spillway'' or a combination of principal and emergency spillways. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(i)/817.46(c)(2)(i) allows for a single open-channel spillway if configured as specified at 30 CFR 816.49(a)(9)/817.49(a)(9). The Federal regulation also provides that the regulatory authority may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows, or earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities, where sustained flows are not expected. OSM notified Montana that it must further revise proposed ARM 26.4.639(10)(a) to allow for a single open-channel spillway only if it is of nonerodible construction and designed to carry sustained flows, or earth-or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

By letter dated February 6, 1996, Montana responded that it would add language at ARM 26.4.639(10)(a) indicating the types of materials that may be used for spillways and the limits on the duration of spillway discharges, depending on materials used (Administrative Record No. MT–12–19). Montana submitted the proposed language in their May 15, 2001, response (Administrative Record No. MT–12–25). This proposed language is no less effective than the Federal regulation at 30 CFR 816.49(a)(9)/817.49(a)(9) and the Director approves ARM 26.4.639(10)(a).

b. Special Impoundment Certification by an Engineer

At ARM 26.4.639(10)(b), Montana proposed to allow additional criteria for sedimentation ponds which do not meet the requirements of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216(a) and which rely primarily on storage to control runoff from the design precipitation event. The Federal regulations at 30 CFR 816.49(c)(2)(iii)/817.49(c)(2)(iii) require that the operator demonstrate and that a qualified registered professional engineer certify that the pond will safely control the design precipitation event, prior to the approval of a pond that relies on storage to control precipitation. OSM interpreted this revision as being no less effective than the Federal regulations. However, OSM also interpreted Montana's rules as having no counterpart to the Federal requirement that MSHA-sized impoundments be demonstrated and certified by a qualified registered professional engineer that the pond would control a design precipitation event. OSM requested in its October 17, 1995, letter that Montana revise ARM 26.4.639(10)(b) to include such demonstration and certification criteria (Administrative Record No. MT–12–16).

Montana responded by letter dated February 6, 1996, that all ponds, including those which use containment in lieu of a spillway, are covered by the certification requirements of ARM 26.4.639(19) (Administrative Record No. MT–12–19). With this clarification, OSM finds proposed ARM 26.4.639(10)(b) to be no less effective than the Federal regulations. The Director approves this revision.

c. Applicable Montana Storm Event

At ARM 26.4.639(10)(b), Montana proposed to require that an impounding structure relying primarily on storage be designed to contain a 25-year, 24-hour design event, or greater event as specified by the department. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(ii)(B)/817.46(c)(2)(ii)(B) requires that the minimum design be for a 100-year, 6-hour storm event. Because ARM 26.4.639(10)(b) allows for an impounding structure that may contain a smaller design event than the Federal regulations, OSM told Montana that the proposed rule was less effective than the Federal counterpart. OSM suggested that Montana either revise proposed ARM 26.4.639(10)(b) to require containment of a 100-year, 6-hour storm event, or demonstrate that the 25-year, 24-hour storm event produces greater volumes than does the 100-year, 6-hour storm event, in order to be no less effective than the Federal regulation.

Montana's narrative response provided data demonstrating that in all cases the precipitation from the 25-year, 24-hour storm exceeds that of the 100-year, 6-hour storm (Administrative Record No. MT–12–19). In addition, OSM previously approved Montana's use of the 25-year, 24-hour storm event, in lieu of the 100-year, 6-hour storm event, with respect to surface runoff diversions related to refuse piles and coal mine waste impoundments, in the August 19, 1992, **Federal Register** notice concerning SPATS No. MT–04-FOR (Administrative Record No. MT–7–27; 57 FR 37436). With this demonstration, OSM finds that the Montana rule provides for adequate containment for the run-off from a 100-year, 6-hour storm event and OSM's concern is resolved. The Director finds ARM 26.4.639(10)(b) to be no less effective than the Federal regulation and approves the Montana revision.

O. ARM 26.4.639(22), Removal of Sedimentation Ponds and Other Treatment Facilities

At ARM 26.4.639(22)(a)(i), Montana proposed to delete the need for a drainage basin to be stabilized prior to early removal of ponds and treatment facilities (sooner than 2 years) and to delete the cross-reference to meeting the requirements at ARM 26.4.711 through 26.4.735. Montana stated that ARM 26.4.633, which is cross-referenced, covers these requirements. At ARM 26.4.639(22)(a)(ii), Montana proposed to delete the cross-reference to ARM 26.4.735 and revise it to read 26.4.733. This is because ARM 26.4.734 and 26.4.735 no longer exist in the Montana program.

OSM agrees that the counterpart Federal requirements for 30 CFR 816.46(b)/817.46(b) are contained at ARM 26.4.633. However, OSM reviewed and approved the striking of this same language in a final rule **Federal Register** notice dated May 11, 1990 (55 FR 19727; Administrative Record No. MT–5–48). OSM sees no need to approve the deletion of the language at ARM 26.4.629(22)(a)(i) since we have already done so.

P. ARM 26.4.645(6) and 26.4.646(6), Groundwater and Surface Water Monitoring

Montana proposed to add the requirement at ARM 26.4.645(6) and 26.4.646(6) that sampling and water quality analyses be conducted according to the methodology in the 15th edition of ''Standard Methods for Examination of Water and Wastewater'' or 40 CFR Parts 135 and 434, and ''the department of health and environmental sciences document entitled 'Circular WQB–7, Montana Numeric Water Quality Standards' dated April 4, 1994.'' Montana also proposed deleting the

option to elect methodology in Standard Methods when conducting surface water monitoring.

OSM responded that the addition of the State-specific requirement was acceptable as long as Circular WQB–7 did not conflict with any of the provisions of ''Standard Methods for Examination of Water and Wastewater'' or the provisions of 40 CFR parts 136 and 434. Following a review of Circular WQB–7, OSM found it was not in conflict with 40 CFR Parts 136 and 434, or ''Standard Methods for Examination of Water and Wastewater.''

However, Circular WQB–7 is currently being revised. In the near future, Montana intends to submit revised programmatic rules with a more current version of Circular WQB–7 cross-referenced. Therefore, the Director defers a decision on ARM 26.4.645(6) and 26.4.646(6), at this time, until Montana's new rules are submitted and a current version of Circular WQB–7 is reviewed.

Q. ARM 26.4.721 (1), (2) and (3), Eradication of Rills and Gullies

At ARM 26.4.721, Montana proposed to delete the 9-inch standard for determining repair of rills and gullies and to state that for ''extensive rill or gully erosion, the department may require submittal of a plan of mitigation for such features and department approval prior to implementation of repair work.'' The Federal regulations at 30 CFR 816.95(b)/817.95(b) require, under certain circumstances, that rills and gullies be filled, regraded, and stabilized with the topsoil replaced and the area reseeded and replanted. As ARM 26.4.721 included the same requirements as the Federal regulations, with the exception of the need to replace the topsoil, OSM asked Montana to verify that ARM 26.4.702 would provide for soil (topsoil) redistribution to replace topsoil during the repair of rills and gullies.

In the February 6, 1996, response (Administrative Record No. MT–12–19), Montana stated that ARM 26.4.702 is used for soil redistribution in the repair of rills and gullies in situations where soil replacement was included in the original reclamation plan. Montana stated that in some cases, redistribution has included the reuse of the eroded soil materials, or in other cases, redistribution has included the use of ''new'' soil materials such as surface soils. In the case of soil substitutes, such materials as spoils or scoria rock would be used to repair rills and gullies. With this explanation, the Director approves the Montana revision at ARM 26.4.721 as no less effective than the Federal regulations.

R. ARM 26.4.724(6), Use of Revegetation Comparison Standards

Montana proposed to delete the requirement at ARM 26.4.724(6) which allowed the success of revegetation of less than 100 acres to be based on United States Department of Agriculture (USDA) or United States Department of the Interior (USDI) technical guides, when the 100 acres was not a segment of a larger area proposed for disturbance by mining. There is no current Federal equivalent to this provision. There used to be a Federal provision at 30 CFR 816.116(a)/817.116(a) to allow the regulatory authority to measure revegetation success through the use of technical guidance from the USDA or the USDI. However, this provision was abolished in the September 2, 1983, OSM rulemaking concerning revegetation (**Federal Register** 48 FR 40160).

Due to the fact that there is no current Federal counterpart provision to the deleted Montana rule, the Director finds that the Montana program remains no less effective than the Federal regulations and no less stringent than SMCRA with this deletion. The Director approves this deletion.

S. ARM 26.4.726 (2) and (3), Vegetation Production, Cover, Diversity and Utility Requirements

Montana proposed to revise ARM 26.4.726 (2) and (3) to read ''live cover'' instead of ''cover.'' At 30 CFR 816.116(a)(2)/817.116(a)(2), the Federal regulations use the term ''ground cover'' for the evaluation of revegetation success. Ground cover is defined as the area of the ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite.

''Live cover'' is a subset of ''ground cover'' as defined by the Federal regulations. By allowing only the use of ''live cover'' in evaluating compliance with the revegetation success standards, Montana is not allowing the use of litter in evaluating revegetation success. Montana has proposed stricter vegetative standards by which to sample and evaluate revegetated areas. Therefore, the Montana standard is more stringent than the Federal counterpart. The Director finds proposed ARM 26.4.726(2) and (3) to be no less effective than the Federal regulation and approves the revision.

T. ARM 26.4.821(1)(g), Alternate Reclamation: Submission of Plan

At ARM 26.4.821(1)(g), Montana proposed to allow the use of ''technical standards derived from historical data'' for evaluating revegetation success for alternate reclamation, which includes land reclaimed for use as special use pasture and cropland. The approved State program establishes conditions for the use of technical standards derived from historical data at ARM 26.4.724(5). The conditions include the specification that: (1) The data must come from the premine area or from an area that exhibits comparable cover, production, diversity, density, and utility as well as comparable management, soil type, topographic setting, and climate in comparison to those of the premine area; and (2) the data must be generated for a sufficient period of time to encompass the range of climatic variations typical of the premine or other appropriate area, or data generated from the revegetated area. Areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled. Historical records must be established for each plant community that will be compared to specific reclaimed area plant communities.

The Federal regulations at 30 CFR 816.116(a)(2)/817.116(a)(2) state that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, and stocking. For grazing land, pastureland, or cropland, the Federal regulations at 30 CFR 816.116(b)(1) and (2)/817.116(b)(1) and (2) allow the use of reference areas or such other success standards approved by the regulatory authority for evaluating revegetation success. OSM has previously approved the use of technical standards derived from historical data for evaluating revegetation success on grazing land in Montana (March 21, 1991, **Federal Register**; 56 FR 11666). Further, the conditions set for use of technical standards derived from historical data by Montana ensure that the requirements of 30 CFR 816.116(a)(2) /817.116(a)(2) are met. Therefore, use of technical standards is acceptable for evaluating special use pastureland and ''cropland. The Director finds that the proposed revision at ARM 26.4.821(1)(g), concerning the use of technical standards derived from historical data for setting revegetation success standards on cropland and special use pasture, is not inconsistent

with and is no less effective than the Federal regulations. The Director approves the revision.

U. ARM 26.4.825(4)(a) and (c) and (6), Alternate Reclamation: Alternate Revegetation

Montana proposed to revise ARM 26.4.825(4)(a) and (c) and (6) to read ''cropland'' instead of ''hayland.'' The Federal regulations at 30 CFR 701.5 define cropland to include land used for hay crops, which is the same as hayland.

ARM 26.4.825 requires that all mined lands must be returned to a postmining land use of grazing land and fish and wildlife habitat. Any other postmining land use is considered to be alternate reclamation. The effect of the proposed change at ARM 26.4.825(4)(a) is to require that if the proposed land use is special use pasture, then the area must have a 5 year history of being utilized as special use pasture or cropland. The State may allow deviations in the location of special use pastures from the exact location of premining special use pasture or cropland (rather than hayland). There is no Federal counterpart to this Montana rule. While the definition of cropland is broader than hayland, the proposed change does not render the State program less effective than the Federal regulations.

The proposed change at ARM 26.4.825(4)(c) exempts pastureland from ARM 26.4.724(1), the establishment of native plant community reference areas, and ARM 26.4.728, which requires a predominant composition of native species.

The definition of pastureland at 30 CFR 701.5 states that it consists of land primarily used for the long-term production of domesticated forage plants. 30 CFR 816.116(b)(1) / 817.116(b)(1) allows either the use of reference areas or such other success standards which are approved by the regulatory authority. Although there is no direct Federal equivalent to ARM 26.4.825(4)(c), the Montana revision is not inconsistent with and is no less effective than the Federal regulations.

The effect of the revision at ARM 26.4.825(6) is to require enhancement of wildlife values and protection of wetlands when special use pasture or cropland is proposed. The Federal counterparts at 30 CFR 816.97(f) and (h)/817.97(f) and (h) likewise provide for the enhancement of wildlife values and wetland preservation and restoration. Therefore, the proposed revision is no less effective than the Federal regulations. The Director approves all revisions to ARM 26.4.825.

V. ARM 26.4.924(15), Disposal of Underground Development Waste: General Requirements, and ARM 26.4.927(3)(a), Disposal of Underground Development Waste: Durable Rock Fills

Montana proposed to revise ARM 26.4.927(3)(a) by requiring that the design of a durable rock fill include an internal drainage system ''in accordance with ARM 26.4.924(14) or (15).'' ARM 26.4.924(14), later recodified as (15), would allow for an alternative underdrain system. This is not allowed in the Federal counterparts at 30 CFR 816.71(f)(3)/817.71(f)(3), 816.73/817.73, 816.83(a)(3)/817.83(a)(3), and 816.102(e)/817.102(e).

In OSM's July 10, 1997, issue letter, we informed Montana that the cross-reference to ARM 26.4.924(14) would need to be deleted in order for ARM 26.4.927(3)(a) to be no less effective than the Federal regulations (Administrative Record No. MT–12–20). OSM reminded Montana that this provision was never part of the approved program. OSM told Montana in the August 19, 1992, **Federal Register** (57 FR 37436), when the provision was first proposed, that it could not approve ARM 26.4.924(14), subsequently (15). OSM codified at 30 CFR 926.16(e)(9) the requirement that Montana remove the provision at ARM 26.4.924(14) from its program.

By letter dated May 15, 2001, Montana submitted wording to OSM which deleted the provision at ARM 26.4.924(15) and cross-reference to it at ARM 26.4.927(3)(a) (Administrative Record. No. MT–12–25). This deletion satisfies part of the requirement at 30 CFR 926.16(e)(9) and makes the Montana rules no less effective than the Federal regulations. The Director approves the revision but does not remove the required program amendment at 30 CFR 926.16(e)(9), as not all the requirements of (e)(9) have been met.

W. ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19), and (21), Disposal of Underground Development Waste: General Requirements

a. Definition of ''Waste Disposal Structure'' and Disposal of Underground Development Waste and Coal Processing Waste: Location Relative to Mine Excavations

OSM placed a required program amendment (30 CFR 926.16(e)(5)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to specify whether the waste disposal governed by ARM 26.4.924 and 26.4.932 was within or outside mine surface excavations, and to clarify what constituted a ''waste disposal structure.'' OSM placed the required program amendment on the Montana program due to the June 19, 1990, proposed revisions (Administrative Record No. MT–7–01) to ARM 26.4.924 and 26.4.932 which were not specifically directed either to disposal within mine surface excavations or to disposal outside mine excavations. OSM noted that the performance standards were the same for both, except for the required static safety factor.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a definition of ''waste disposal structure'' at ARM 26.4.301(134) which stated that waste disposal structures are either composed of underground development waste or coal processing waste located outside of the mine workings and the surface area, and are other than impoundments or embankments. At ARM 26.4.924(3), Montana proposed similar wording to the general requirements for the disposal of underground development waste to clarify that underground development waste may not be placed in impoundments or embankments, to clarify the performance standards for the reclamation of waste disposal areas—including those relating to location, and to clarify that the disposal of underground waste into the spoils backfill of excavation areas must be in accordance with sections 3 and 20 of ARM 26.4.924.

Montana's revisions and clarification of the definition of a ''waste disposal structure,'' as well as the general requirements for the disposal of underground development waste, how they relate to the location of mine excavations, and which performance standards apply, assure that the program meets the Federal counterpart at 30 CFR 816.81/817.81 through 816.84/817.84. The Director finds the Montana rules to be no less effective than the counterpart Federal regulations and approves the revisions. The Director removes the required program amendment at 30 CFR 926.16(e)(5).

b. Disposal of Underground Development Waste: Requirements of the Mine Safety and Health Administration (MSHA)

OSM placed a required program amendment (30 CFR 926.16(e)(6)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436; Administrative Record No. MT–7–27) to amend ARM 26.4.924(4) to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and 77.215, and to clarify what

constitutes a ''coal waste refuse structure.''

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana deleted the undefined term ''coal waste disposal structure'' and revised ARM 26.4.924(4)(b) to require that ''waste disposal structures'' must meet the requirements of 30 CFR 77.214 and 77.215. With this revision, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(6).

c. Disposal of Underground Development Waste, General Requirements: Covering With Non-Toxic Material

OSM placed a required program amendment (30 CFR 926.16(e)(7)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to incorporate a requirement no less effective than 30 CFR 816.83(c)(4)/817.83(c)(4) which concerns the covering of refuse piles with non-toxic materials.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed new language at ARM 26.4.924(9) which requires that waste disposal structures be covered with four feet of non-toxic and non-combustible material following final grading. With this revision, the Director finds that Montana's requirements are no less effective than the Federal requirements at 30 CFR 816.83(c)(4)/817.83(c)(4) and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(7).

X. ARM 26.4.930(3), Placement and Disposal of Coal Processing Waste: Special Application and Requirements

OSM placed a required program amendment (30 CFR 926.16(e)(8)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to add application requirements to ARM 26.4.930 which are no less effective than 30 CFR 780.25(e) and (f)/784.16(e) and (f). OSM placed the required program amendment on the Montana program due to the absence of requirements that specify detailed application and design requirements for coal processing waste impoundments. Specifically, the construction of impoundments from coal processing waste behind embankments constructed of other materials was not prohibited in the Montana program.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana rectified this omission by cross-referencing the requirements at ARM 26.4.505(5) which in turn cross-reference the requirements at ARM 26.4.603, 26.4.639, and 26.4.642. ARM 26.4.505(6) prohibits the retention of coal waste impoundments as part of the post-mining land use. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(8).

Y. ARM 26.4.932(5)(b), Disposal of Coal Processing Waste

At ARM 26.4.932(5)(b), Montana proposed to delete the statements that: (1) Inspections may terminate when the coal processing waste has been graded; (2) the provisions of subsection (9) have been met (which primarily concern cover with a minimum of four feet of non-toxic and non-combustible material); and (3) the soil has been distributed in accordance with the soil redistribution and stockpiling provisions at ARM 26.4.702. In the place of this statement, Montana has added a provision that inspections would be made in accordance with the critical construction schedule contained in ARM 26.4.924(19)(b). ARM 26.4.924(19)(b) requires that inspections be made at least quarterly and during critical construction periods, which include the following: (1) Foundation preparation; (2) underdrains and protective filter systems; (3) installation of final surface drainage systems; and (4) final grading and revegetation.

The Federal counterpart regulation concerning the inspection of coal mine waste at 30 CFR 816.83(d)/817.83(d) includes, in addition to the Montana provisions listed above, the requirements that inspections are conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, there are more frequent inspections if a danger or harm exists to the public health and safety, a certified report made by the qualified, registered professional engineer to the regulatory authority promptly after each inspection, color photographs in the certified report of the drainage system and protective filters taken during and after construction but before coal mine waste covers the underdrains, and a copy of the report to be maintained at the minesite. These Federal requirements for the inspection of coal mine waste (30 CFR 816.83(d) and (d)(2) through (d)(4)/817.83(d) and (d)(2) through (d)(4)) are included in the Montana program at ARM 26.4.924(a), (c), (d), (e) and (f). However, Montana has only cross-referenced ARM 26.4.924(b).

Therefore, Montana needs to revise the cross-reference at ARM 26.4.932(5)(b) to read ''ARM 26.4.924'' in general, in order to be no less effective than the Federal counterpart regulations. Therefore, the Director defers on the approval of ARM 26.4.932(5)(b) at this time until Montana revises the cross-reference to read ''ARM 26.4.924.''

Z. ARM 26.4.1014, Test Pits

At ARM 26.4.1014, Montana proposed additional requirements for prospecting test pits. If the coal from a test pit is sold directly to, or commercially used directly by, the intended end user, or, if the coal is sold through a broker or agent, proposed ARM 26.4.1014(2)(c) required that a test pit permit application contain the information specified at proposed ARM 26.4.1014(2)(c)(i) through (iii).

The Federal regulations at 30 CFR 772.14 also provide for such use of coal from exploration operations. However, the Federal regulations at 30 CFR 772.14(b) require prior written approval by the regulatory authority that such sale or commercial use is for testing purposes, otherwise a permit to mine must be obtained.

Proposed ARM 26.4.1014 does not specifically require prior written approval from the State prior to use of the coal in this manner. OSM requested an interpretation from Montana that, because the ARM provisions in subchapter 4 are applicable to test pit permits, Montana's program provides for specific written approval prior to such use of coal obtained from prospecting test pits at ARM 26.4.1014 (Administrative Record No. MT–12–16). There is no specific reference to subchapter 4 for such an approval at ARM 26.4.1014.

For whatever reason, Montana did not respond to OSM with an interpretation that written approval from the State is required prior to sale or commercial use of coal from test pits for testing purposes, in the response dated February 6, 1996 (Administrative Record No. MT–12–19). In the absence of such an interpretation, and because the revision is otherwise no less effective than the Federal regulations, the Director approves ARM 26.4.1014 with the interpretation that Montana's program provides for specific written approval prior to the use of coal obtained from prospecting test pits.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment by letters dated February 8, 1995, and March 1, 1995 (Administrative Record Nos. MT–12–03 and MT–12–08). The Northern Plains Resource Council (NPRC) responded on April 14, 1995, with comments on the proposed revisions (Administrative Record No. MT–12–15) as follows:

1. ARM 26.4.304(6)(b)(ii)(A)

The NPRC had concerns that Montana omitted iron and manganese from testing in this subsection. OSM addressed similar issues at Finding No. 5 above.

2. ARM 26.4.501A(3)(a)

The NPRC commented that the change from two to four spoil ridges would result in a standard variance which would not promote reclamation as contemporaneously as possible and could result in adverse impacts. While OSM's regulation at 30 CFR 816.101(a)(2)/817.101(a)(2) is suspended indefinitely, OSM has had a four spoil ridge requirement off and on since 1979. We have no basis for finding that requiring regrading within four spoil ridges is not as contemporaneous as practicable. OSM finds Montana's rules to be no less effective than the Federal provisions at 30 CFR 816.100/817.100.

3. ARM 26.4.519A

The NPRC commented that revisions made to this section would ''eliminate all highwalls, with certain very limited exceptions * * *'' OSM believes that the NPRC intended to state ''delete the requirement to eliminate all highwalls.'' OSM also read Montana's revision as deleting a requirement to eliminate all highwalls and depressions with spoil and suitable waste materials, as well as the allowable exemption from that requirement, and to require that the operator demonstrate that the volume of spoil and suitable waste materials is more than sufficient to restore the disturbed area to approximate original contour (AOC). Montana explained in its February 6, 1996, letter (Administrative Record No. MT–12–19) that this revision was made to eliminate a redundancy with ARM 26.4.501A(1). However, since that time, Montana has eliminated ARM 26.4.501A(1) from its regulatory program. In the near future, Montana will submit its current regulatory program to OSM for evaluation of all revised rules, including the requirement to eliminate all highwalls and depressions with spoil and suitable waste materials. At this time, OSM is deferring on the proposed revision at ARM 26.4.519A.

The NPRC had concerns with ARM 26.4.515(2) and wondered if those rules were approved by OSM. OSM responds that approval of ARM 26.4.515(2) was deferred by OSM in the May 11, 1990, **Federal Register** notice (55 FR 19727; Administrative Record No. MT–5–48). A deferral means that a provision is unenforceable until Montana and OSM resolve the issues related to the rulemaking. Montana has since developed guidelines concerning approximate original contour and post-mining topography which it believes will address OSM's concerns with ARM 26.4.515(2). Those guidelines will be submitted in the near future to OSM.

4. ARM 26.4.623(2)(a)(iii)

Although the NPRC listed ARM 623.4.623(2)(a)(iii) as the rule in question, OSM believes that ARM 26.4.623(2)(a)(iii) is the correct cite. The NPRC objects to the change from a daily blasting period with a maximum of four hours per day to a maximum of eight hours per day. At the same time, the NPRC acknowledges that Montana has the right to impose more restrictive blasting conditions by the authority given to the States at 30 CFR 816.64(a)(2)/817.64(a)(2). Because Montana is complying with its responsibilities of 30 CFR 816.64(a)(2)/817.64(a)(2), OSM suggests that the NPRC address any on-the-ground concerns with blasting schedules to Montana.

5. ARM 26.4.639(10)

The NPRC expressed concerns that the proposed revisions to this subsection would result in a lack of safety standards. OSM addressed similar concerns at finding no. 14a and b above concerning a single emergency spillway and the containment of a 25-year, 24 hour storm event.

6. ARM 26.4.721

The NPRC appeared to be concerned with Montana's elimination of its nine inches or greater, rill and gulley standard for regraded and resoiled lands. OSM points out that the Federal counterpart at 30 CFR 816.95/817.95 does not use a depth criteria to determine eradication standards. Rather the Federal rules determine the need to eradicate rills and gullies based on their impact to postmining land use or the reestablishment of vegetative cover, or the impact to water quality standards for receiving streams. Montana has proposed rules with similar language which are no less effective than the Federal regulations.

7. ARM 26.4.1001 and 26.4.1001A

The NPRC expressed concerns that without a definition of ''substantially disturb,'' Montana would not be able to interpret its regulations at ARM 26.4.1001 and 1001A. Subsequent to the NPRC's letter dated April 14, 1995, ARM 26.4.1001 and 26.4.1001A were removed from this submittal, revised and approved in SPATS No. MT–018–FOR, **Federal Register** notice dated January 22, 1999 (64 FR 3611). Montana submitted a definition of ''substantially disturb'' at ARM 26.4.301(114) which was also approved at that time.

8. ARM 26.4.321

The NPRC objected to Montana's use of general cross-references, in particular subsection (g), stating that the response is not specific enough. In support, the NPRC cites the corresponding Federal rules at 30 CFR 780.37(a)/784.24(a) and their specific references ''down to section and subsection.'' However, the Federal regulation at 30 CFR 780.37(a)/784.24(a) requires that the State ''Describe the plans to remove and reclaim each road that would not be retained * * *'' Therefore, when Montana lists subchapters 5, 6, 7, and 8 of ARM, Montana is listing the pertinent subchapters which have road-specific reclamation information which is required at 30 CFR 780.37(a)/784.24(a). OSM believes that Montana is complying with the Federal regulations and its rules are no less effective than the Federal regulations.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program by letters dated February 8, 1995; March 1, 1995; and May 23, 2001 (Administrative Record Nos. MT–12–03, MT–12–08 and MT–12–27).

Four agencies responded that they had no comments: the U.S. Army Corps of Engineers (March 2 and March 20, 1995, letters; Administrative Record Nos. MT–12–09 and MT–12–14), the Bureau of Mines (March 17, 1995, letter; Administrative Record No. MT–12–13), the Mine Safety and Health Administration (March 9, 1995 and June 11, 2001, letters; Administrative Record Nos. MT–12–11 and MT–12–30); and the Bureau of Indian Affairs (June 11, 2001, letter; Administrative Record No. MT–12–29).

The Natural Resources Conservation Service (NRCS) responded on March 8,

1995, with comments on the approved Montana program but had no comments on the proposed revisions (Administrative Record No. MT–12–10). The NRCS had the following comments concerning Montana's already approved program:

1. Reference to Soil Conservation Service (SCS)

The NRCS commented that Montana needed to change the reference from the former SCS to the current NRCS, specifically at ARM 26.4.724(3)(a) and 26.4.825(1)(b). OSM is aware that Montana has already made the requested change to those sections in its 1999 revised rules—which will be submitted to OSM in the near future.

2. ARM 26.4.304(9)(b)

The NRCS suggested that ''current condition and trend'' be revised to read ''current ecological condition and trend.'' The requested information at ARM 26.4.304(9)(b) comprises aspects of the vegetative community which Montana has decided are necessary to the permit application. These descriptions are State guidelines, as allowed at 30 CFR 779.19(a)/783.19(a) and not Federal requirements. Therefore, OSM cannot require Montana to incorporate the term ''ecological.'' OSM can, however, send the comment to Montana for consideration when, at such future date, the program is amended.

3. ARM 26.4.304(11)

The NRCS suggested that the soil survey be done at the first order level of detail, which would be consistent with the map scale of one inch equals 400 feet at ARM 26.4.304(11). Both the Federal regulations and Montana's program specify that a soil survey be conducted in accordance with the standards of the National Cooperative Soil Survey. As the scale specified, one inch equals 400 feet, is consistent with a soil survey of the first order, Montana is performing a soil survey to the specifications requested by the NRCS.

4. ARM 26.4.726(2)

The NRCS suggested that the 51 percent native species required by Montana be changed to 75 percent native species, which is required by the NRCS. The counterpart Federal regulations at 30 CFR 816.111(a)(2)/817.111(a)(2) do not specify a certain percentage of native species, but only that native species be used. OSM cannot require Montana to adopt a programmatic requirement which is more stringent than the Federal regulations.

5. ARM 26.4.825(c)(iv)

The NRCS suggested that the reference to the ''Land Capability Guide for Montana, U.S. Soil Conservation Service, September 1, 1982'' be replaced with a reference to an updated NRCS guide, the ''current Field Office Technical Guide (FOTG) for Natural Resources Conservation Service.'' However, there is no Federal counterpart to these rules. Therefore, there is no Federal standard to measure the Montana rule by. OSM cannot require the States to revise their programs when there is no Federal counterpart.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). As this amendment did not relate to air or water quality standards adopted under the authority of the Clean Air Act or the Clean Water Act, OSM requested comments on the amendment from EPA (Administrative Record No. MT–12–04). EPA responded on February 23, 1995, that it had no comments on Montana's amendment (Administrative Record No. MT–12–06).

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 8, 1995, we requested comments on Montana's amendment (Administrative Record No. MT–12–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with certain exceptions, the amendment sent to us by Montana on February 1 and 28, 1995, and further clarified by letter dated February 6, 1996.

We approve, as discussed in: finding no. 1, ARM 26.4.301(79) through (119), (121) through (133), and (135) through (137), concerning definitions; ARM 26.4.407(1) and (2), concerning conditions of permit; ARM 26.4.601(7), concerning general requirements for road and railroad loop construction; ARM 26.4.639(18)(c), concerning sedimentation ponds and other treatment facilities; ARM 26.4.711(2) through (5), concerning establishment of vegetation; ARM 26.4.924(5), (10) through (14), (16), (17), (18), and (20), concerning disposal of underground development waste: general requirements; ARM 26.4.1005(2), concerning drill holes; ARM 26.4.1006(1), concerning roads and other transportation facilities; ARM 26.4.1007(2), concerning grading, soil salvage, storage, and redistribution; and ARM 26.4.1009(1), concerning diversions; finding no. 2, ARM 26.4.308(2), concerning operations plan; ARM 26.4.314(3), concerning plan for protection of the hydrologic balance; ARM 26.4.405(6) and (8), concerning findings and notice of decision; ARM 26.4.501A(3)(a), concerning final grading requirements; ARM 26.4.524(2), concerning signs and markers; ARM 26.4.601(5), concerning general requirements for road and railroad loop construction; ARM 26.4.602(2), concerning location of roads and railroad loops; ARM 26.4.603(9) and Introduction, concerning embankments; ARM 26.4.605(3)(a)(i), concerning hydrologic impact of roads and railroad loops; ARM 26.4.623(2)(b)(iii), concerning blasting schedule; ARM 26.4.633(2), concerning water quality performance standards; ARM 26.4.634(1) and (2), concerning reclamation of drainages; ARM 26.4.638(2)(a), concerning sediment control structures; ARM 26.4.639(1), (10)(c) and (18), Introduction, concerning sedimentation ponds and other treatment facilities; ARM 26.4.642(5) and (8), concerning permanent and temporary impoundments; ARM 26.4.702(4), concerning redistribution and stockpiling of soil; ARM 26.4.711(6), concerning establishment of vegetation; ARM 26.4.927(2)(c), concerning disposal of underground development waste: durable rock fills; ARM 26.4.932(8)(a)(ii), concerning disposal of coal processing waste; ARM 26.4.1002(1) and (2), concerning information and monthly reports; ARM 26.4.1005(3), concerning drill holes; ARM 26.4.1006(2) through (4), concerning roads and other transportation facilities; ARM 26.4.1007(1), concerning grading, soil salvage, storage, and redistribution; ARM 26.4.1009(2), concerning diversions; ARM 26.4.1011(1), concerning hydrologic balance; ARM 26.4.1116(7)(c), concerning bonding: criteria and schedule for release of bond; ARM 26.4.1116A(1) and (2), concerning reassertion of jurisdiction; ARM 26.4.1141(3), concerning designation of lands unsuitable: definition; ARM 26.4.1212(1),

concerning point system for civil penalties and waivers; finding no. 4, ARM 26.4.301(120), the definition of ''test pit;'' finding no. 5, ARM 26.4.304(5), (6)(a)(ii) and (6)(b)(ii)(B), concerning baseline: information: environmental resources; finding no. 6, ARM 26.4.314(5), concerning protection of the hydrologic balance; finding no. 7, ARM 26.4.321(1) and (3), concerning transportation facilities plan; finding no. 8, ARM 26.4.404(5)(b), concerning review of application; finding no. 9, ARM 26.4.405(6)(l), concerning findings and notice of decision; finding no. 10, ARM 26.4.407(4), concerning conditions of permit; finding no. 11, ARM 26.4.505(4) through (8), concerning burial and treatment of waste materials and disposal of off-site generated waste and fly ash; finding no. 13, ARM 26.4.603(9) and 26.4.639(18)(b), concerning sedimentation ponds and other treatment facilities: construction of sedimentation ponds that meet the criteria of 30 CFR 77.216A; finding no. 14, ARM 26.4.639(10)(b) and (19), concerning the construction of sedimentation ponds; finding no. 17, ARM 26.4.721(1) through (3), concerning eradication of rills and gullies; finding no. 18, ARM 26.4.724(6), concerning the use of revegetation comparison standards; finding no. 19, ARM 26.4.726(2) and (3), concerning vegetation production, cover, diversity, density and utility requirements; finding no. 20, ARM 26.4.821(1)(g), concerning alternate reclamation: submission of plan; finding no. 21, ARM 26.4.825(4)(a) and (c) and (6), concerning alternate reclamation: alternate revegetation; finding no. 22, ARM 26.4.924(15) and 26.4.927(3)(a), concerning the disposal of underground development waste; finding no. 23, ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19) and (21), concerning the definition of ''waste disposal structure'' and the disposal of underground development waste: general requirements; finding no. 24, ARM 26.4.930(3), concerning placement and disposal of coal processing waste: special application and requirements; and finding no. 26, ARM 26.4.1014, concerning test pits.

We defer on, as discussed in finding no. 3, ARM 26.4.301(78); 26.4.303, Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); ARM 26.4.405(5); 26.4.405A; 26.4.405B; and ARM 26.4.1206(1), concerning ownership and control; finding no. 12, ARM 26.4.519A, concerning thick overburden and excess spoil; finding no. 16, ARM 26.4.645(6) and 26.4.646(6), concerning groundwater and surface water monitoring; and finding no. 25, ARM 26.4.932(5)(b), concerning the disposal of coal processing waste.

We already approved, as discussed in finding no. 15, ARM 26.4.639(22), concerning the removal of sedimentation ponds and other treatment facilities, in the May 11, 1990, **Federal Register** notice (55 FR 19727; SPATS No. MT–001–FOR and MT–002–FOR).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Montana program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Montana program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only the approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implication. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulation surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 1 and 28, 1995	February 12, 2002	ARM 26.4.301(79) through (137); 26.4.304(5) and (6); 26.4.308(2); 26.4.314(3) and (5); 26.4.321(1) and (3); 26.4.404(5); 26.4.405(6) and (8); 26.4.407(1), (2) and (4); 26.4.501A(3); 26.4.505(4) through (8); 26.4.524(2); 26.4.601(5) and (7); 26.4.602(2); 26.4.603(9) and Introduction; 26.4.605(3); 26.4.623(2); 26.4.633(2); 26.4.634(1) and (2); 26.4.638(2); 26.4.639(1), (10), (18) and (19); 26.4.642(5) and (8); 26.4.702(4); 26.4.711(2) through(6); 26.4.721(1) through (3); 26.4.724(6); 26.4.726(2) and (3); 26.4.821(1); 26.4.825(4) and (6); 26.4.924(3) through (5), (8) through (21); 26.4.927(2) and (3); 26.4.930(3); 26.4.932(8); 26.4.1002(1) and (2); 26.4.1005(2) and (3); 26.4.1006(1) through (4); 26.4.1007(1) and (2); 26.4.1009(1) and (2); 26.4.1011(1); 26.4.1014; 26.4.1116(7); 26.4.1116A(1) and (2); 26.4.1141(3); and 26.4.1212(1) are approved. ARM 26.4.301(78); 26.3.303, Introduction, (1), (6) through (8), (13) through (15), and (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B, 26.4.519A; 26.4.645(6); 26.4.646(6); 26.4.932(5)(b) and 26.4.1206(1) are deferred.

§ 926.16 [Amended]

3. Section 926.16 is amended by removing and reserving paragraphs (b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), and (e)(8).

[FR Doc. 02–3339 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA59]

Enrollment of Certain Family Members of E–4 and Below Into TRICARE Prime

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule provides for the enrollment of certain family members of E–4 and below in TRICARE Prime. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager, or to refuse enrollment into TRICARE Prime. This enrollment may be terminated at any time and these family members may re-enroll at any time.

EFFECTIVE DATE: February 12, 2002.

ADDRESSES: TRICARE Management Activity (TMA), Program Operations Directorate, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Mr. Duaine Goodno, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–0039.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/ CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This final rule implements section 712 of the National Defense Authorization Act for Fiscal Year 1999 which modified chapter 55 of title 10, United States Code by adding a new section 1097a which provides for automatic TRICARE Prime enrollment for active duty families of E–4 and below in certain circumstances. Owing to the small number of family members of E–4 and below who are not already enrolled in TRICARE Prime, and the nature of TRICARE Prime enrollment, the Department will send an enrollment letter to all sponsors with non-enrolled family members. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager, or to refuse enrollment into TRICARE Prime. The choice of whether to remain enrolled in TRICARE Prime, or to decline enrollment to participate in TRICARE Extra or Standard remains completely voluntary. They may also re-enroll at any time. The one year lock-out provision for early disenrollment will not apply to any family member of E–4 and below regardless of how or when they were enrolled.

Beneficiaries who are enrolled into TRICARE Prime will receive official notification of their enrollment in writing such as a letter with beneficiary card. For those who remain eligible for TRICARE Prime enrollment, the sponsor will be sent a written notification of the pending expiration and renewal of the TRICARE Prime enrollment. TRICARE Prime enrollments shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined by the sponsor.

II. Review of Comments

The interim final rule was published in the **Federal Register** on June 28, 2000 (65 FR 39804). We received one comment from a beneficiary group who felt that the intent of the program reflects a paternalistic attitude indicating junior enlisted family members lack the capacity to make a selection of health care benefits that is in their best interest. They contend that proper education concerning the TRICARE benefit would be a more effective method to assure beneficiaries that they have made a proper selection of health care services. They also recommend that we design a mechanism whereby the beneficiary acknowledges enrollment in the program such as an enrollment form as is required today. They are particularly concerned with the transient nature of the military community and the potential of forcing families into high Point of Service charges.

Response: Based on the above comments, the Department will focus on marketing this program to this beneficiary population. An enrollment form will continue to be required of these beneficiaries which will document the fact that they accept the TRICARE Prime rules and it will allow them to provide their primary care manager preferences.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of Executive Order 12866.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

This rule is being issued as a final rule.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.17 is amended by revising paragraphs (b)(3), (c)(2)(i), (n)(1) and (o)(4) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(b) * * *

(3) *Automatic enrollment of certain dependents:* Under 10 U.S.C. 1097a, in the case of dependents of active duty members in the grade of E–1 to E–4, such dependents who reside in a catchment area of a military treatment facility shall be enrolled in TRICARE Prime consistent with procedures established under paragraph (o)(7) of this section. The enrollment of a dependent of the member may be terminated by the member, dependent or other responsible individual at any time.

(c) * * *

(2) * * *

(i) Dependents of active duty members are eligible to enroll in Prime. After all active duty members are enrolled, those dependents of active duty members in the grade of E–1 to E–4 will have second priority and all other dependents of active duty members will have third priority.

* * * * *

(n) * * *

(1) *Primary care manager.* (i) All active duty members and Prime enrollees will be assigned or allowed to select a primary care manager pursuant to a system established by the MTF Commander or other authorized official, and consistent with the access standards in paragraph (p)(5)(i) of this section. The primary care manager may be an individual, physician, a group practice, a clinic, a treatment site, or other designation. The primary care manager may be part of the MTF or the Prime civilian provider network. The enrollee will be given the opportunity to register a preference for primary care manager from a list of choices provided by the MTF Commander. This preference will be entered on a TRICARE Prime enrollment form or similar document. Preference requests will be honored subject to availability, under the MTF beneficiary category priority system and other operational requirements established by the commander and other authorized person. MTF PCM nonavailability may be a condition of assignment to a civilian provider network PCM.

(ii) Prime enrollees who are dependents of active duty members in pay grades E–1 through E–4 shall have priority over other active duty dependents for enrollment with MTF PCMs, subject to MTF capacity.

* * * * *

(o) * * *

(4) *Voluntary disenrollment.* Any non-active duty beneficiary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs). Beneficiaries who disenroll prior to their annual enrollment renewal date will not be eligible to reenroll in Prime for a one-year period from the effective date of the disenrollment. This one-year exclusion may be waived by the Assistant Secretary of Defense (Health Affairs) based on extraordinary circumstances. This one-year period does not apply to any dependent whose sponsor is in the grade of E–1 to E–4.

* * * * *

Dated: January 31, 2002.

L.M. Bynum,

Alternate Federal Register Notice Liaison Officer, Department of Defense.

[FR Doc. 02–2767 Filed 2–11–02; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0313; FRL–7137–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 20, 2001, and concern recordkeeping provisions and volatile organic compound (VOC) emissions from spray coating operations, metal parts and products coating operations, coating and ink manufacturing, surfactant manufacturing, and polyester resin operations. We are approving local rules that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on March 14, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4115.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On September 20, 2001 (66 FR 48399), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	109.0	Record Keeping for Volatile Organic Compound Emissions	08/18/00	3/14/01
SCAQMD	481.0	Spray Coating Operations	11/17/00	3/14/01
SCAQMD	1107.0	Coating of Metal Parts & Products	11/17/00	3/14/01
SCAQMD	1141.1	Coating and Ink Manufacturing	11/17/00	3/14/01
SCAQMD	1141.2	Surfactant Manufacturing	11/17/00	3/14/01
SCAQMD	1162.0	Polyester Resin Operations	11/17/00	3/14/01

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the SCAQMD correcting the adoption date for Rule 109. Consequently, we have published the correct date within this notice at the table above.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative 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 32111, ''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. section 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 April 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 6, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(286) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) March 14, 2001.

(i) Incorporation by reference.

(A) South Coast AQMD.

(*1*) Rule 109 amended on August 18, 2000, Rule 481 amended on November 17, 2000, Rule 1107 amended on November 17, 2000, Rule 1141.1 amended on November 17, 2000, Rule 1141.2 amended on November 17, 2000, and Rule 1162 amended on November 17, 2000.

* * * * *

[FR Doc. 02–3190 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214a; FRL–7141–9]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area) includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. In a **Federal Register** notice published June 19, 2000, the Cincinnati-Hamilton area was redesignated to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) effective July 5, 2000. On September 11, 2001, the United States Court of Appeals for the 6th Circuit vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). Therefore, in response to the Court's findings, this rulemaking action reinstates EPA's redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the effective date of the original redesignation action. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

DATES: This direct final rule is effective April 15, 2002, without further notice, unless EPA receives adverse comment by March 14, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Gregory, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the Cabinet's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Scientist, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–9116, (*gregory.ray@epa.gov*).

SUPPLEMENTARY INFORMATION:

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II. What is the background for this action?
III. Why are we taking this action?
IV. What is the effect of this action?
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I. What Action Are We Taking?

In this direct final rulemaking, EPA is reinstating the redesignation to attainment for the Kentucky portion of the Cincinnati-Hamilton area for the 1-hour ozone NAAQS. The Cincinnati-Hamilton area, which includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton; was redesignated to attainment for the 1-hour ozone NAAQS (65 FR 37879, June 19, 2000), effective July 5, 2000.

EPA is taking this action in response to the Court decision in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) which vacated EPA's redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion. The Court in *Wall* v. *EPA* considered a number of challenges to EPA's redesignation action, but upheld EPA's redesignation action in all respects with regard to the Kentucky portion of the Cincinnati-Hamilton area. The Court also concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, all counties in the Cincinnati-Hamilton area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Ohio Counties of Butler, Clermont, Hamilton, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, due to monitored violations of the 1-hour ozone NAAQS that occurred during the 1987–1989 time frame.

For the 1996–1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) and the State of Ohio Environmental Protection Agency (OEPA) submitted separate requests to redesignate the Kentucky and Ohio portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS. On October 28, 1999, the Cabinet submitted a prehearing redesignation request and requested that EPA parallel process this submittal. The Cabinet submitted the final redesignation request, including public hearing results, on December 13, 1999. On July 2, 1999, EPA received a proposed redesignation request from OEPA. OEPA submitted additional supporting information on August 16, 1999, and completed the submittal by providing public hearing results on December 22, 1999.

On January 24, 2000 (65 FR 3630) EPA proposed approval of the above requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides requirements as provided for in section 182(f) of the CAA. After taking and considering comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS. This rulemaking also approved the Cabinet's and OEPA's redesignation requests, including their plans for maintaining the 1-hour ozone NAAQS.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the Court for review of EPA's redesignation of the Cincinnati-Hamilton area. The petitioners urged the Court to find that EPA erred in a number of respects, but the Court upheld EPA's actions with respect to all requirements for redesignation that relate to Kentucky. The Court also rejected all of the petitioners' challenges with respect to the Ohio portion of the Cincinnati-Hamilton area, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of part D, subpart 2. Specifically, the Court rejected challenges to, and upheld EPA's approvals of, the Kentucky and Ohio maintenance plans and EPA's conclusions with respect to transportation conformity requirements. The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the RACT rules of part D, subpart 2 before being redesignated. The Court vacated ''EPA's action in redesignating Cincinnati-Hamilton area to attainment status for ground level ozone'' and ''remanded for further proceedings consistent with this opinion.''

III. Why Are We Taking This Action?

In response to the Court's vacatur and remand, EPA believes that it is consistent with the Court's opinion to reinstate the redesignation of the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the original effective date of this redesignation action. The grounds for reinstatement are as follows: (1) EPA has issued a final redesignation action for the Kentucky portion of the area, after notice and comment rulemaking; (2) the Court, after reviewing EPA's actions, has upheld EPA's determination of attainment for the entire Cincinnati-Hamilton area (both the Ohio and Kentucky portions), EPA's approval of the maintenance plans for both the Kentucky and Ohio portions of the area, and EPA's action approving Kentucky's request for redesignation of the Kentucky portion of the Cincinnati-Hamilton area. Thus, both EPA and the Court concur that Kentucky has fully met the requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area, the entire area was determined to be in attainment for the 1-hour ozone NAAQS, and both portions of the area have fully-approved maintenance plans that have withstood challenges after judicial review. The Court left intact all of EPA's determinations with respect to attainment and maintenance for the entire area, as well as all the remaining requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area.

The CAA expressly provides for designation and redesignation of portions of nonattainment areas. See, for example section 107(3)(D): ''The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or *portion thereof* within the State * * *.'' Similarly, section 107(d)(3)(E) provides that: ''The Administrator may not promulgate a redesignation of a nonattainment area (*or portion thereof*) to attainment unless—* * *.''

EPA has in the past approved redesignation requests for a portion of an area in a multi-state nonattainment area that had attained the standard. See, for example, the June 29, 1995, redesignation of the Huntington, West Virginia, portion of the Huntington-Ashland, Kentucky, ozone nonattainment area to attainment and approval of that area's maintenance plan (60 FR 33748).

Under these circumstances, EPA has the authority to redesignate the Kentucky portion of the area, independent of whether Ohio has met all the requirements for a fully approved State Implementation Plan (SIP) for the Ohio portion of the area.

IV. What Is the Effect of This Action?

When it takes effect, the reinstatement of EPA's redesignation for the Kentucky portion of the Cincinnati-Hamilton area will be effective as of the original effective date of EPA's June 19, 2000, redesignation action. Thus, the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318 will continue to read attainment as of July 5, 2000. This direct final rulemaking has no impact on the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton. The attainment status of the Ohio portion of the Cincinnati-Hamilton area is being addressed in a separate rulemaking action.

Other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area and upheld by the Court are unaffected by today's rulemaking. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress or attainment continue to remain inapplicable to the area. Since the NO_X exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO_X requirements for moderate ozone nonattainment areas.

V. Administrative 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 reinstates a previous redesignation to attainment, an action that affects the attainment status of a geographical area. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. 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 rulemaking 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 reinstates a previous action redesignating an area to attainment—an action which affects the attainment status of a geographical area. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action 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 CAA. 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 CAA. The current action merely reinstates a previous action that was taken based on review of a Kentucky SIP submittal that satisfied all CAA provisions. 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. section 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. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2002. 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 81

Air pollution control, National parks, Wilderness areas.

Dated: January 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–3357 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301214; FRL–6821–9]

RIN 2070–AB78

1,2-Ethanediamine, Polymer With Methyl Oxirane and Oxirane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an existing exemption to lower the number average molecular weight to 1,100 for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest. Huntsman Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301214, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301214 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301214. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 7, 2001 (66 FR 56305) (FRL–6807–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E6350) by Huntsman Corporation, 3040 Post Oak Blvd., Houston, TX. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that the existing tolerance exemption listed under 40 CFR 180.1001(c) for 1,2-ethanediamine, polymer with methyl oxirane and oxirane be amended to include a number average molecular weight (MW) of 1,100 for residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane, (CAS Reg. No. 26316–40–5).

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined

in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a water absorbing polymer with a number average MW greater than or equal to 10,000 daltons.

Additionally, the polymer, 1,2-ethanediamine, polymer with methyl oxirane and oxirane, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,100 number average MW is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 1,2-ethanediamine, polymer with methyl oxirane and oxirane meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 1,2-ethanediamine, polymer with methyl oxirane and oxirane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 1,2-ethanediamine, polymer with methyl oxirane and oxirane is 1,100 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 1,2-ethanediamine, polymer with methyl oxirane and oxirane conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not 1,2-ethanediamine, polymer with methyl oxirane and oxirane shares a common mechanism of toxicity with any other chemicals. However, 1,2-ethanediamine, polymer with methyl oxirane and oxirane conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of 1,2-ethanediamine, polymer with methyl oxirane and oxirane, EPA has not used a safety factor analysis to assess the risk. For the same reasons the

additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 1,2-ethanediamine, polymer with methyl oxirane and oxirane is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

In 40 CFR 180.1001(c) there is an existing exemption from the requirement from a tolerance for 1,2-ethanediamine, polymer with methyl oxirane and oxirane (CAS Reg. No. 26316–40–5) minimum number average MW 2,800 and the range of number average MW is 2,800 to 10,000 daltons.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for 1,2-ethanediamine, polymer with methyl oxirane and oxirane nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301214 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301214, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section

408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this 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 Part 180

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

Dated: January 30, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, the table in paragraph (c) is amended by revising the entry for the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
1,2-Ethanediamine, polymer with methyl oxirane and oxirane, 1,100 minimum number average molecular weight (in amu) (CAS Reg. No. 26316–40–5).	.....	Surfactant, dispersing agent
* * *	* * * *	

* * * * *

[FR Doc. 02–3354 Filed 2–11–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301216; FRL–6822–4]

RIN 2070–AB78

Tetraethoxysilane Polymer with Hexamethyldisiloxane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of tetraethoxysilane polymer with hexamethyldisiloxane (CAS Reg. No. 104133–09–7); when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Wacker Silicones Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of tetraethoxysilane polymer with hexamethyldisiloxane.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301216, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301216 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301216. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 1, 2001 (66 FR 55178) (FRL–6807–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 5E4595) by Wacker Silicones, 3301 Sutton Road, Adrian, MI. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of tetraethoxysilane polymer with hexamethyldisiloxane (CAS Reg. No. 104133–09–7).

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

is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. Tetraethoxysilane polymer with hexamethyldisiloxane is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. Tetraethoxysilane polymer with hexamethyldisiloxane does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. Tetraethoxysilane polymer with hexamethyldisiloxane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. Tetraethoxysilane polymer with hexamethyldisiloxane is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. Tetraethoxysilane polymer with hexamethyldisiloxane is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. Tetraethoxysilane polymer with hexamethyldisiloxane is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, tetraethoxysilane polymer with hexamethyldisiloxane, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 6,574–6,695 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, tetraethoxysilane, polymer with hexamethyldisiloxane meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to tetraethoxysilane, polymer with hexamethyldisiloxane.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that tetraethoxysilane, polymer with hexamethyldisiloxane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of tetraethoxysilane, polymer with hexamethyldisiloxane is 6,574–6,695 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since tetraethoxysilane, polymer with hexamethyldisiloxane conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency considers ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not tetraethoxysilane, polymer with hexamethyldisiloxane share a common mechanism of toxicity with any other chemicals. However, tetraethoxysilane, polymer with hexamethyldisiloxane conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of tetraethoxysilane, polymer with hexamethyldisiloxane.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of tetraethoxysilane, polymer with hexamethyldisiloxane, EPA has not used a safety factor analysis to assess the risk. For the same reasons the

additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that tetraethoxysilane, polymer with hexamethyldisiloxane is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are not any existing exemptions from the requirement of a tolerance for tetraethoxysilane, polymer with hexamethyldisiloxane.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for tetraethoxysilane, polymer with hexamethyldisiloxane nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of tetraethoxysilane, polymer with hexamethyldisiloxane from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301216 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301216, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section

408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this 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 Part 180

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

Dated: January 30, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (inamu) (CAS Reg. No. 104133–09–7).	.....	Antifoam agent
* * *	* * * *	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (in amu) (CAS Reg. No. 104133–09–7).	.....	Antifoam agent
* * *	* * * *	

[FR Doc. 02–3355 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301207; FRL–6818–8]

RIN 2070–AB78

Zeta-Cypermethrin and its Inactive R-isomers; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues ofzeta-cypermethrin and its inactive R-isomers in or on edible podded legume vegetables (Crop subgroup 6A) at 0.5 parts per million (ppm); succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop Group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This document also corrects two errors that appeared in the codified text of a final rule issued for zeta-cypermethrin in the **Federal Register** of September 17, 2001. The amendatory language for that document should have included instructions removing the entry for milk and adding an entry for goat, fat, under the table in § 180.418(a)(2). This document corrects those errors.

DATES: This regulation is effective February 12, 2002. Objections and requests for hearings, identified by docket control number OPP–301207, must be received by EPA on or before April 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301207 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6100; and e-mail address: larocca.george@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and ProposedRules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings athttp://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301207. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 8, 2000 (65 FR 66998) (FRL–6750–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.418 be amended by establishing a tolerance for residues of the insecticide zeta-cypermethrin (-alpha-cyano(3-phenoxyphenyl) methyl (±)(*cis-trans* 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate in or onthe following raw agricultural commodities:

PP 0F06207 proposed tolerances in or on the raw agricultural commodities wheat, grain at 0.15 ppm; wheat forage, at 2.5 ppm; hay at 6.0 ppm; wheat, straw at 6.5 ppm; wheat, bran at 0.20 ppm; sorghum, grain, at 0.50 ppm; sorghum, forage at 0.10 ppm; sorghum fodder at 1.5 ppm; tomatoes at 0.10 ppm; peppers at 0.30 ppm; peas and beans (dried, succulent, and edible podded) at 0.50 ppm; soybeans at 0.05 ppm; poultry, meat at 0.05 ppm; poultry, meat by-products at 0.05 ppm; poultry, fat at 0.05 ppm; eggs at 0.05 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.30 ppm; and milk, fat at 0.2 ppm (reflecting 0.01 ppm in whole milk).

Based on EPA's review, the petition was revised by the petitioner to:Propose tolerances of 0.5 ppm for edible podded legume vegetables (Crop subgroup 6A); propose tolerances of 0.1 ppm for succulent, shelled peas and beans (Crop subgroup 6B); propose tolerances of 0.05 ppm in or on dried, shelled peas and beans, except soybean (Crop subgroup 6C); propose tolerances of 0.05 ppm in or on soybean, seed; propose tolerances of 0.2 ppm in or on the fruiting vegetables, except cucurbits group (Crop group 8); propose tolerances of 0.5 ppm in or on sorghum, grain; propose tolerances of 0.1 ppm in or on sorghum forage; propose tolerances of 5.0 ppm in or on sorghum, stover; propose tolerances of 0.2 ppm in or on wheat, grain; propose tolerances of 3.0 ppm in or on wheat, forage; propose tolerances of 6.0 ppm in or on wheat, hay; propose tolerances of 7.0 ppm in or on wheat straw; propose tolerances of 10.0 ppm in or on aspirated grain fractions; propose tolerances of 0.2 ppm in or on meat of cattle, goats, hogs, horses, and sheep.

Although EPA is requesting a number of changes to the initial petitions and Notice of Filings, the nature of the changes, i.e. clarification and correction of commodity terms, international harmonization of tolerances, reduction in tolerance levels are not considered significant nor do they alter the risk assessment. Therefore, EPA is issuing this as a final action.

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

EPA performs a number of analyses to determine the risks from aggregateexposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of zeta-cypermethrin and its inactive *R*-isomers on edible podded legume vegetables (Crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zeta-cypermethrin and its inactive R-isomers were discussed in detail in the **Federal Register** notice of September 17, 2001 (66 FR 47979) (FRL–6801–1). In that document (Unit III.), the toxicological profile for zeta-cypermethrin and cypermethrin was fully discussed. The observed health effects as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) were presented in tables sorted by the EPA Guideline number for each study type. The presentation of the toxicological profile for zeta-cypermethrin in the September 17, 2001 **Federal Register** remains current and can, therefore, be referenced as background in relation to the tolerances being established with this document.

Zeta-cypermethrin is an enriched isomer of cypermethrin. In order to select toxicity endpoints for the purposes of risk assessment, bridging data on zeta-cypermethrin were submitted so that the toxicity of zeta-cypermethrin could be compared with that of cypermethrin and the data bases could be combined to form one complete data base for both chemicals. In the selection of toxicity endpoints, studies conducted with zeta-cypermethrin were used wherever possible.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes

used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in thevariations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below whichcarcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for zeta-cypermethrin and its inactive R-isomers used for human risk assessment was presented in Table 3 in Unit III.B. of the **Federal Register** of September 17, 2001 (66 FR 47979) (FRL–6801–1). The selected hazard endpoints used in the risk assessment to support the tolerances published on September 17, 2001, remain current. Therefore, the same toxicological dose and hazard endpoints are used in the risk assessment for the tolerances established through this rulemaking. For this reason, the detailed table listing the selected endpoints is not being republished with this final rule. Refer to the September 17, 2001 **Federal Register** cited above to review the hazard endpoints selected for zeta-cypermethrin.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of zeta-cypermethrin and its inactive R-isomers, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from zeta-cypermethrin and its inactive R-isomers in food as follows:

Zeta-cypermethrin is an enriched-enantiomer verson of the insecticide cypermethrin. Both cypermethrin and zeta-cypermethrin are mixtures of eight isomers, with the active components consisting of the S-enantiomers (''S'' configuration at the cyano bearing carbon). The two differ in that cypermethrin has a 50:50 R/S ratio whereas zeta-cypermethrin is enriched in the S-enantiomers with a ratio of 90:10 of the S/R. The enriched isomer formulation provides for similar insect control but at lower use rates. Since use of both cypermethrin and zeta-cypermethrin result in human exposure to the same eight isomers, dietary and non-dietary (residential) aggregate risk assessment was conducted by adding the uses of the two chemicals.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100% crop treated have been used in these analyses for all commodities having either established or proposed tolerances of cypermethrin or zeta-cypermethrin. In cases where a commodity has an established tolerance for cypermethrin and a proposed tolerance for zeta-cypermethrin, the larger of the two values was used in the assessment.DEEM default processing factors were used for all commodities in this assessment. All exposures are Tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure.

TABLE 1.—SUMMARY OF ACUTE DIETARY EXPOSURE, DIETARY EXPOSURE, AND RISK FOR ZETA-CYPERMETHRIN.

Population Subgroup	Acute Dietary	
	Dietary Exposure (mg/kg/day)	%aPAD
U.S. population	0.021818	21.8
Infants (<1 year old)	0.024398	24.4
Children (1-6 years)	0.032668	32.7
Females (13-50 years)	0.020468	20.5

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues and 100% crop treated have been used in these analyses for all commodities having either established or proposed tolerances of

cypermethrin or zeta-cypermethrin. For chronic risk assessments, residue estimates for foods (e.g., apples) or food-forms (e.g., apple juice) of interest are multiplied by the averaged consumption estimate of each food/food-form of each population subgroup. Exposure estimates are expressed in mg/kg bwt/day and as a percent of the cPAD.

TABLE 2.—SUMMARY OF CHRONIC DIETARY EXPOSURE AND RISK FOR ZETA-CYPERMETHRIN

Population Subgroup	Chronic Dietary	
	Dietary Exposures (mg/kg/day)	%cPAD
U.S. population	0.007442	2.4
Infants (<1 year old)	0.006485	10.8
Children (1-6 years)	0.014017	23.4
Females (13-50 years)	0.006513	10.9

As shown by the summarized acute and chronic results in Tables 1 and 2, all risk estimates fall below EPA's level of concern (≥ 100% PAD). All exposures are Tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure. Refinements to the analyses in the form of percent crop treated considerations and/or anticipated residues would likely reduce the exposure and risk estimates for zeta-cypermethrin.

iii. *Cancer*. Cypermethrin has been classified as a Category C, possible human carcinogen, based on an increased incidence of lung adenomas and adenomas plus carcinomas combined in female mice (Cancer Peer Review Committee, 1988). The evidence was not considered strong enough to warrant a quantitative estimation of human risk. Cypermethrin has not been classified under the more current, Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996). Because zeta-cypermethrin is an enriched isomer of cypermethrin, it is also classified as a Category C carcinogen and a RfD approach was recommended for human risk assessment purposes.

2. *Dietary exposure from drinking water*. Based on the available data, cypermethrin/zeta-cypermethrin is a moderately persistent chemical that primarily degrades by photolysis in water and biodegradation. Depending on the environmental circumstances, it may persist for periods of months post-treatment. Cypermethrin is tightly bound to soil particles and is not likely to move to ground waters. However, the degradate dichlorovinyl acid (DCVA) is mobile and likely to reach ground waters. Additional information about the mobility of this degradate has been requested. Cypermethrin can contaminate surface waters through spray drift. Under some conditions it may also have a potential for runoff into surface waters (primarily through erosion), for several months post-application. Since zeta-cypermethrin is preferentially associated to the soils, the fraction of the chemical in the water column should be small. In addition, it is expected that treatment of drinking water would remove substantial portions of cypermethrin/zeta-cypermethrin present in water. Although the Agency has not addressed residues of DCVA in water, the Agency has concluded that DCVA does not need to be included in the dietary risk for food.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or thePesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produceestimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to zeta-cypermethrin and its inactive R-isomers, they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models, the EECs of zeta-cypermethrin and its inactive R-isomers for acute exposures are estimated to be 8.9 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.46 ppb for surface water and 0.006 ppb for ground water. These values generally represent upper-bound estimates of the concentrations that might be found in surface water and ground water due to the use of cypermethrin on Brassica vegetables, which has the highest application rate among both cypermethrin and zeta-cypermethrin on all crops over which the chemicals are applied.

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

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure. However, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide

cypermethrin). The analytical method does not distinguish cypermethrin from zeta-cypermethrin, and the toxicological endpoints are the same. Therefore, dietary and non-dietary residential aggregate risk assessment is conducted by adding the uses of the two chemicals.

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

EPA does not have, at this time, available data to determine whether zeta-cypermethrin and its inactive R-isomers has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zeta-cypermethrin and its inactive R-isomers does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that zeta-cypermethrin and its inactive R-isomers has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and or postnatal exposure to either zeta-cypermethrin or cypermethrin. In the prenatal developmental toxicity studies in rats, there was no evidence of developmental toxicity at the highest does tested (35 mg/kg/day). Maternal toxicity (decreased body weight gain (both chemicals), and food consumption, ataxia, urine and feces-stained for (zeta-cypermethrin) was observed at the LOAEL of 25 mg/kg/day. The maternal NOAELs were established at 12.5 mg/kg/day for zeta-cypermethrin and 17.5 mg/kg/day for cypermethrin. In the definitive rabbit developmental toxicity study conducted with cypermethrin, the maternal LOAEL was 450 mg/kg/day based on decreased body weight gain. No developmental toxicity was observed at dose levels up to 700 mg/kg/day. In the 2-generation reproduction study in rats conducted with zeta-cypermethrin, off-spring toxicity (decreased pup weight gain during lactation) was observed at the same treatment level which resulted in parental systemic toxicity (NOAEL: 27 mg/kg/day; LOAEL: 45 mg/kg/day). In the definitive multigeneration reproduction study conducted with cypermethrin, the parental NOAEL/LOAEL is lower than the pup NOAEL/LOAEL, both based on decreased in body weight gain (2.5/7.5 mg/kg/day for the parents versus 7.5/37.5 mg/kg/day for the pups).

3. *Conclusion.* There is a complete toxicity data base forzeta-cypermethrin and its inactive R-isomers and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The safety factor can be removed for zeta-cypermethrin and its inactive R-isomers because: (1) There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; (2) the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a developmental neurotoxicity study - and a safety factor (e.g., neuropathy in adult animals; central nervous system malformation following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) and therefore does not warrant an FQPA safety factor; and (3) the dietary (food and drinking water) and non-dietary exposure assessment will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food andresidential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to zeta-cypermethrin and its inactive R-isomers will occupy 22% of the aPAD for the U.S. population, 21% of the aPAD for females 13 years and older, 24% of the aPAD for infants (>1 year old), and 33% of the aPAD for children (1-6 years). In addition, there is potential for acute dietaryexposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and

comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)[1]	Ground Water EEC (ppb)[1]	Acute DWLOC (ppb)[2]
U.S. population	0.10	22%	8.9	0.006	2,700
All infants (< 1 year old)	0.10	24%	8.9	0.006	760
Children (1-6 years old)	0.10	33%	8.9	0.006	670
Females (13-50 years old)	0.10	21%	8.9	0.006	2,400

[1] EECs resulting from the maximum proposed application rate (Cypermethrin on brassica vegetables).
[2] The acute DWLOC was calculated as follows: DWLOC (μg/L) = maximum water exposure (mg/kg/day) x body weight (kg) ÷ consumption (L/day) x 0.001 mg/μg

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to zeta-cypermethrin and its inactive R-isomers from food will utilize 12% of the cPAD for the U.S. population, 11% of the cPAD for infants (<1 year old) and 23% of the cPAD for children (1-6 years). There are no residential uses for zeta-cypermethrin and its inactive R-isomers that result in chronic residential exposure to zeta-cypermethrin and its inactive R-isomers. However, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). The analytical method does not distinguish cypermethrin from zeta-cypermethrin, and the toxicological endpoints are the same. Therefore, dietary and non-dietary residential aggregate risk assessment is conducted by adding the use of the two chemicals. Based on the use pattern, chronic residential exposure to residues of zeta-cypermethrin and its inactive R-isomers is not expected. In addition, there is potential for chronic dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC(NON-CANCER) EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.06	12	0.46	0.006	1,900
All infants (<1year old)	0.06	11	0.46	0.006	540
Children (1-6years old)	0.06	23	0.46	0.006	460
Females 13-50 years old	0.06	11	0.46	0.006	1,600

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

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure; however, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). Cypermethrin registered residential uses constitute short- and intermediate-term exposure scenarios; endpoints have been selected for short- and intermediate-term incidental oral and inhalation exposures, and the acceptable MOEs for short- and intermediate-term exposures are 100. Since the toxicological effects through the inhalation exposure route are similar to those toxicological effects through the oral routes, short-term aggregate risk assessment was conducted adding inhalation, oral non-dietary exposure, and average food and water exposure.

Since all the acceptable MOEs are at the same level, the aggregate risks for population subgroup can be estimated by calculating aggregate Margin of Exposure values ($MOE_{aggregate}$). $MOE_{aggregate} = 1/MOE_I + 1/MOE_D + 1/MOE_O + 1/MOE_{food} + 1/MOE_{water}$ where I = inhalation, D = dermal (no dermal endpoints were selected), O = non-dietary oral, MOE_{food} = average food from the chronic DEEM analysis.

As residue values in water from monitoring data are not available, therefore, as with the acute dietary aggregate risk estimate for the short- and intermediate-term aggregate risk assessments, the DWLOCs have to be back calculated. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,500 for adult males, 1,700 for

adult females, 830 for a child, and 1,700 for infants. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (μg/L)	Ground Water EEC (μg/L)	Short-Term DWLOC (μg/L)
Adult male	1,300	100	0.46	0.006	3,300
Adult female	1,500	100	0.46	0.006	2,800
Child	600	100	0.46	0.006	830
Infants	1,000	100	0.46	0.006	910

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin and its inactive R-isomers is not registered for use on any sites that would result in residential exposure; however, cypermethrin does have indoor and outdoor residential uses (zeta-cypermethrin is an enriched-enantiomer version of the insecticide cypermethrin). Cypermethrin registered residential uses constitute short- and intermediate-term exposure scenarios; endpoints have been selected for short- and intermediate-term incidental oral and inhalation exposures, and the acceptable MOEs for short- and intermediate-term exposures are 100. Since the toxicological effects through the inhalation exposure route are similar to those toxicological effects through the oral routes, short-term aggregate risk assessment was conducted adding inhalation, oral non-dietary exposure, and average food and water exposure.

Since all the acceptable MOEs are at the same level, the aggregate risks for the population subgroups can be estimated by calculating aggregate Margin of Exposure values ($MOE_{aggregate}$). $MOE_{aggregate} = 1/MOE_I + 1/MOE_D + 1/MOE_O + 1/MOE_{food} + 1/MOE_{water}$.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 640 for adult males, 740 for adult females, 300 for child, and 530 for infants. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	Aggregate MOE (Food +Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC μg/L	Ground Water EEC μg/L	Intermediate-Term DWLOC μg/L
Adult male	640	100	0.46	0.006	1,500
Adult female	740	100	0.46	0.006	1,300
Child	300	100	0.46	0.006	330
Infant	530	100	0.46	0.006	410

5. *Aggregate cancer risk for U.S. population.* Cypermethrin/zeta-cypermethrin has been classified as a Category C carcinogen, based on an increased incidence of lung adenomas and adenomas plus carcinomas combined in female mice. However, the evidence was not considered strong enough to warrant a quantitative estimation of human risk. An RfD approach was recommended for human risk assessment purposes. Dietary risk concerns due to long-term consumption of zeta-cypermethrin are adequately addressed in the chronic exposure analysis. For the U.S. population only 11% of RfD is occupied by chronic food and water exposure.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general

population, and to infants and children from aggregate exposure to zeta-cypermethrin and its inactive R-isomers residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of cypermethrin residues in plants and animal products in PAM II (Method 1). This method involves initial acetone-hexane extraction, followed by partitioning with water. The organic layer is evaporated, then redissolved in cyclohexane-methylene chloride and passed through a gel permeation column. The eluate is evaporated, redissolved in hexane and passed through a Florisil column. Cypermethrin residues are analyzed by gas chromatography (GC) with an electron capture detector (ECD). Since zeta-cypermethrin is an isomer enriched form of cypermethrin and the zeta-cypermethrin is an enriched form of cypermethrin, and the PAM II method is not stereospecific, this method is considered adequate for enforcement of the proposed tolerances of zeta-cypermethrin.

B. International Residue Limits

There are no specific Codex maximum residue limits (MRLs) for zeta-cypermethrin, but there are Codex MRLs for cypermethrin. The proposed or recommended U.S. tolerances for residue zeta-cypermethrin in/on soybean seeds (0.05 ppm), eggs (0.05 ppm), dried shelled peas and beans (0.05 ppm), and meat byproducts (0.05 ppm) are equivalent to their respective Codex MRLs. The recommended U.S. tolerance for fruiting vegetables (0.2 ppm) is also equivalent to the Codex MRL for egg plants, but is lower than Codex MRLs for tomatoes and peppers (0.5 mg/kg). Recommended U.S. tolerances for meat (cattle, goats, hogs, horses, and sheep) and sorghum stover will be increased to 0.2 and 5.0 ppm, respectively to match their equivalent Codex MRLs. The recommended U.S. tolerances for milk and wheat hay and straw are higher than their equivalent Codex MRLs and cannot be harmonized. The recommended U.S tolerance for succulent shelled peas and beans cannot be harmonized with the Codex MRLs for common beans and peas since the crop groups are defined differently. The Codex definitions are based on the crop being a pea or a bean, whereas the U.S. groups are based on whether the raw agricultural commodity is shelled or the pod is consumed.

V. Conclusion

Therefore, the tolerance is established for residues of zeta-cypermethrin and its inactive R-isomers, Z-cypermethrin (S-cyano (3-phenoxyphenyl) methyl (+/-) (*cis-trans* 3-(2,2-dichloro, in or on edible podded legume vegetables (Crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (Crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (Crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (Crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301207 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301207, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 23, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.418 is amended by removing the entire entries for ''hogs, meat'' and ''milk''; alphabetically adding 15 commodities; and revising

the entries for ''cattle, meat,'' ''goat, meat'' ''horse, meat,'' and ''sheep, meat,'' in the table in paragraph (a)(2) to read as follows:

§ 180.418 Cypermethrin and anisomer zeta-cypermethrin; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Aspirated grain fractions	10.0 ppm
* * * * *	
Cattle, meat	0.2 ppm
* * * * *	
Dried, shelled peas and beans, except soybean (Crop subgroup 6C)	0.05 ppm
Edible podded legume vegetables (Crop subgroup 6A)	0.5 ppm
* * * * *	
Fruiting vegetables, except cucurbits (Crop Group 8)	0.2 ppm
Goat, fat	1.00 ppm
* * * * *	
Goat, meat	0.2 ppm
* * * * *	
Hog, meat	0.2 ppm
* * * * *	
Horse, meat	0.2 ppm
* * * * *	
Sheep, meat	0.2 ppm
Sorghum, forage	0.1 ppm
Sorghum, grain	0.5 ppm
Sorghum, stover	5.0 ppm
Soybean, seed	0.05 ppm
Succulent, shelled peas and beans (Crop subgroup 6B)	0.1 ppm
* * * * *	
Wheat, forage	3.0 ppm
Wheat, grain	0.2 ppm
Wheat, hay	6.0 ppm
Wheat straw	7.0 ppm

* * * * *

[FR Doc. 02–2611 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; FCC 01–362]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC or Commission) continues to develop, adopt and implement a number of strategies to ensure that the numbering resources of the North American Numbering Plan (NANP) are used efficiently, and that all carriers have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace.

DATES: Effective March 14, 2002, except for §§ 52.19(c)(3)(i) and 52.19(c)(4), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sanford Williams, (202) 418–2320 or e-mail at *swilliam@fcc.gov* or Jennifer Gorny at (202) 418–2320 or *jgorny@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200 (Third Report and Order),* adopted on December 12, 2001, and released on December 28, 2001. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may also be obtained through the World Wide Web at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders,* or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of the Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200

1. With the rules adopted in the *Third Report and Order,* the Commission creates national standards to address numbering resource optimization. The *Third Report and Order,* among other things: (1) Declines to require paging providers and providers that do not have local number portability (LNP) and are operating outside the top 100 metropolitan statistical areas (MSA) to participate in thousands-block number pooling; (2) lifts the ban on service-specific and technology-specific overlays (collectively, specialized overlays or SOs), and provides that the Commission will consider petitions filed by state commissions for authority to implement SOs on a case-by-case basis; (3) subjects carriers that violate numbering requirements or fail to cooperate with an auditor conducting a ''for cause'' or random audit to the denial of requests for numbering resources; (4) allows incumbent local exchange carriers (LECs) subject to rate-of-return or price cap regulation to recover their carrier-specific costs directly related to national thousands-block number pooling through the existing cost recovery mechanisms of rate-of-return or price cap adjustments, and allows all other carriers to recover their carrier-specific costs related to pooling in any manner allowed under the Act; and (5) clarifies that all non-exempt carriers operating within the top 100 MSAs must be LNP-capable and must participate in thousands-block number pooling.

2. The *Third Report and Order* also finds that state commissions should be allowed to have password-protected access to the North American Numbering Plan Administration (NANPA) database to obtain data concerning area codes within their state.

3. The rules adopted herein facilitate increased carrier accountability and incentives to use numbers efficiently, and promote the judicious conservation of numbering resources.

Final Paperwork Reduction Analysis

4. This *Third Report and Order* contains some new and/or modified information collections, which will be submitted to OMB for approval, as prescribed by the Paperwork Reduction Act.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking (Second Report and Order),* 66 FR 9528 (Feb. 8, 2001). The Commission sought written public comment on the proposals in the *Second Report and Order,* including comment on the IRFA. No comments received addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Third Report and Order

6. In the *Second Report and Order,* we sought public comment on (a) the relative advantages of SOs as opposed to all-services overlays, and the conditions under which SOs, if adopted, should be implemented to promote competitive equity, maximize efficient use of numbering resources, and minimize customer inconvenience; (b) whether carriers should be held accountable when related carriers fail to comply with reporting requirements; (c) whether state commissions should be granted direct, password-protected access to the mandatory reporting data received by the NANPA; (d) whether to allow extensions (for a fee or otherwise) on the 180-day reservation period for numbers; (e) what enforcement mechanisms should be applied when a carrier either fails to cooperate with an audit, or fails to resolve identified areas of noncompliance; (f) whether state commissions should be allowed to conduct audits; (g) the costs associated with thousands-block number pooling; (h) whether to require carriers to become LNP-capable for the purpose of participating in thousands-block number pooling; and (i) whether a ''safety valve'' should be established for carriers that need additional numbering resources, but fail to meet the utilization threshold in a given rate center.

7. In this *Third Report and Order,* we continue efforts to utilize efficiently the numbering resources in the North American Numbering Plan (NANP). Our goal with this *Third Report and Order* is to build upon previous successes in working with the state commissions and the telecommunications industry to ensure that the limited numbering resources of the NANP do not exhaust prematurely, and to ensure that all carriers have the numbering resources they need to compete in the telecommunications marketplace. In particular, we address issues raised in the *Second Report and Order* and several petitions for reconsideration and/or clarification of the *Report and Order and Further Notice of Proposed Rulemaking,* 65 FR 37703 (June 16, 2000), and the *Second Report and Order.* In addition, we also clarify, on our own motion, certain aspects of our numbering resource optimization rules and local number portability requirements.

B. Summary of Significant Issues Raised by Public Comments

8. In a recent letter, the Small Business Administration (SBA) contends that in the Final Regulatory Flexibility Analysis for the *Second Report and Order* the Commission failed to ''* * * include a description of telecommunications service providers that are directly affected by the audit provisions * * *'' and believes that the ''* * * oversight may be due to the inconsistency in the text of the Order itself. Under the Commission's numbering rules, carriers and service providers are two separate classes.'' The SBA then notes that the terms ''carrier'' and ''service provider'' were used interchangeably within the audit provisions of the *Second Report and Order.*

9. Although the terms ''carrier'' and ''service provider'' were used interchangeably within the audit provisions, the rule on auditing procedures in section 52.15(k) of the Commission's rules (in Appendix A of the *Second Report and Order*) clearly applies to telecommunications service providers. As discussed in section 52.5(i) of the Commission's numbering rules, a service provider is an ''* * * entity that receives numbering resources from the NANPA * * *'' Thus, given our findings that the rule is clear, we conclude that the description of telecommunications service providers in the FRFA for the *Second Report and Order* was adequate, and that no clarifications are needed in the FRFA.

10. In the *SBA Letter,* the SBA states that, in the FRFA for the *Second Report and Order,* the Commission fails to ''* * * adequately consider alternatives to the audit program that would minimize the impact on small businesses.'' In the FRFA, the Commission is required to discuss significant alternatives that would change the impact on small businesses. Because we did not identify any significant alternatives to the rules that would influence the impact on small businesses, no significant alternatives were discussed in the FRFA for the *Second Report and Order.* The Commission also notes that the small businesses that commented on our audit proposal generally were in favor of audits.

11. Commenters responded to several issues addressed in the *Second Report and Order* that concern small entities. Their opinions are summarized below. In addition, the Commission has considered any potential significant economic impact of the rules on small entities.

12. *Thousands-Block Number Pooling for Non-LNP Capable Carriers.* Commenters generally agree that the costs to small and rural carriers to participate in thousands-block number pooling would outweigh any benefits derived from the pooling requirements. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) fears that the costs may be so prohibitive as to delay the implementation of advanced services to rural subscribers. The Commission agrees with commenters that there is insufficient evidence in the record to conclude that requiring non-LNP capable carriers to participate in pooling would result in significant number resource savings. Data from the Local Exchange Routing Guide (LERG) shows that in the approximately 2,012 rate centers in the 180 MSAs beyond the largest 100, approximately 1,320 are rate centers where there are no competing service providers and approximately 300 are rate centers where there is only one competing service provider. Because these carriers hold relatively few numbering resources, we agree that requiring them to participate in pooling would not result in significant numbering resource optimization benefits.

13. *Independent State Commissions' Authority to Conduct Audits.* One commenter expressed concern that giving states individual authority to conduct audits may expose carriers to two different standards. It predicts that this result would impose costs and burdens on small carriers that outweigh the benefits of the additional audits. The Commission declined to give states the independent authority to conduct audits, concluding that most of the audits that states would be given authority to conduct would serve the same purpose as the Commission audits, thus posing the potential burden of overlapping audits that would outweigh the benefits of the additional audits. It is the Commission's expectation, however, that the Commission audit staff will cooperate with state commissions, including coordinating compliance and enforcement activities and sharing information gathered during the course of the audits. In addition, this *Third Report and Order* does not modify a state commission's authority to conduct audits under state law.

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

14. 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 rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''

The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

15. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

17. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. *Federal Cost Recovery.* In the *Third Report and Order,* the Commission establishes a federal cost recovery mechanism under which price cap LECs may recover their extraordinary carrier-specific costs directly related to thousands-block number pooling through an exogenous adjustment to access charges. This may require carriers to submit cost analyses demonstrating that pooling results in a net cost increase rather than a cost reduction to qualify for the exogenous adjustment to access charges.

19. *Safety Valve.* The Commission establishes a safety valve in the *Third Report and Order* to ensure that carriers experiencing rapid growth in a given market will be able to meet customer demand. Carriers may demonstrate the need for the safety valve by demonstrating to their state commission that: (1) The carrier will exhaust its numbering resources in a market or rate area within three months (in lieu of the 6 months-to-exhaust requirement); and (2) projected growth is based on the carrier's actual growth in the market or rate area, or on the carrier's actual growth in a reasonably comparable market, but only if that projected growth varies no more than 15 percent from historical growth in the relevant market. A carrier may also be granted relief if it demonstrates that it has received a customer request for numbering resources in a given rate center that it cannot meet with its current inventory. If the customer request is withdrawn or declined, the requesting carrier must return the numbering resources to the NANPA or Pooling Administrator, and may not retain the numbering resources to serve other customers without first meeting our growth numbering resource requirements.

20. *Service-Specific and Technology—Specific Area Code Overlays* (collectively, specialized overlays or SOs). State commissions seeking to implement a SO will be required to seek authority on a case-by-case basis from the Commission. State commissioners should discuss why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay. State commissions should also specifically address the following: (1) The technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs; (6) whether there will be 10-digit dialing in the SO and the underlying area code(s); (7) whether the SO and underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. 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): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. *Thousands-Block Number Pooling for Non-LNP Capable Carriers.* In this *Third Report and Order,* we decline to extend pooling requirements to paging carriers and non-LNP capable carriers outside of the largest 100 MSAs that have not received a request to deploy LNP from a competing carrier. We believe the costs associated with the alternative of requiring all carriers, including small entities, to participate in pooling would greatly outweigh any numbering resource optimization benefits. In addition, these costs imposed on smaller and rural carriers may delay efforts in bringing advanced services to rural subscribers. Thus, we reaffirm our current rules that certain carriers, *e.g.,* paging carriers and carriers outside of the largest 100 MSAs who have not received a request to deploy LNP from a competing carrier, are exempted from pooling requirements.

23. *Service-Specific and Technology-Specific Area Code Overlays.* In this order, we lift the prohibition on SOs and will consider proposals submitted by state commissions to implement SOs on a case-by-case basis. Such an approach allows state commissions to consider the surrounding local circumstances, including the needs of small, local businesses, in deciding whether or how to provide area code

relief. In the alternative, we examined a requirement mandating that state commissions impose all-services area code overlays as the primary method for area code relief. However, the Commission believes that states should have the flexibility to determine the best form of area code relief.

Report to Congress

24. The Commission will send a copy of this *Third Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Third Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

25. Pursuant to Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this Third Report and Order is hereby Adopted and Part 52 of the Commission's rules Are Amended and Adopted as set forth in the rule changes.

26. The policies, rules and requirements adopted herein are adopted and shall be effective March 14, 2002, except for §§ 52.19(c)(3)(i) and 52.19(c)(4), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

27. Incumbent local exchange carriers seeking to recover carrier-specific costs directly related to national thousands-block number pooling as described herein may file the necessary tariffs to take effect no earlier than April 2, 2002.

28. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

PART 52—NUMBERING

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

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. In § 52.15, revise paragraphs (g)(4) and (k)(2) and add paragraphs (g)(5) and (k)(3) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(4) *Non-compliance.* The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an Operating Company Number (OCN). The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm, or may overturn, the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.

(5) *State access to applications.* State regulatory commissions shall have access to service provider's applications for numbering resources. The state commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.

* * * * *

(k) * * *

(2) The Enforcement Bureau will oversee the conduct and scope of all numbering audits conducted under the Commission's jurisdiction, and determine the audit procedures necessary to perform the audit. Numbering audits performed by independent auditors pursuant to this section shall be conducted in accordance with generally accepted auditing standards and the American Institute of Certified Public Accountants' standards for compliance attestation engagements, as supplemented by the guidance and direction of the Chief of the Enforcement Bureau.

(3) Requests for ''for cause'' audits shall be forwarded to the Chief of the Enforcement Bureau, with a copy to the Chief of the Common Carrier Bureau. Requests must state the reason for which a ''for cause'' audit is being requested and include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines. The Chief of the Enforcement Bureau will provide carriers up to 30 days to provide a written response to a request for a ''for cause'' audit.

3. In § 52.19, revise paragraph (c)(3) introductory text, and (c)(3)(i) and add paragraph (c)(4) to read as follows:

§ 52.19 Area code relief.

* * * * *

(c) * * *

(3) An all services area code overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s), subject to the following conditions:

(i) No all services area code overlay may be implemented unless all numbering resources in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity, except to the extent that a technology- or service-specific overlay is authorized by the Commission. No group of telecommunications carriers shall be excluded from assignment of numbering resources in the existing area code, or be assigned such resources only from the all services overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and

* * * * *

(4) A technology-specific or service-specific overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s) and numbering resources in the new area code overlay are assigned to a specific technology(ies) or service(s). State commissions may not implement a technology-specific or service-specific overlay without express authority from the Commission.

4. In § 52.21, add paragraph (r) to read as follows:

§ 52.21 Definitions.

* * * * *

(r) The term *100 largest Metropolitan Statistical Areas (MSAs)* refers to the MSAs set forth in the appendix to this part and any subsequent MSAs identified by U.S. Census Bureau data to be in the largest 100 MSAs.

[FR Doc. 02–3278 Filed 2–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 96–98; FCC 02–11]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document, the Commission dismisses the petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) filed by those parties that have not indicated an intent to pursue their respective petitions.

DATES: These petitions are dismissed as of February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in CC Docket Nos. 96–45, 96–98 released on January 29, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this document, the Commission dismisses the petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) filed by those parties that have not indicated an intent to pursue their respective petitions.

II. Discussion

2. To the extent that parties have not indicated an intent to pursue their respective petitions for reconsideration of the *Universal Service First Report and Order,* 62 FR 32862 (June 17, 1997), *Local Competition First Report and Order,* 61 FR 45476 (August 29, 1996) and *Local Competition Second Report and Order,* 61 FR 47284 (September 6, 1996) in response to the public notices, the Commission deems such petitions withdrawn and dismiss these petitions. The passage of time and intervening developments have rendered many such petitions moot or irrelevant in light of intervening events.

3. The Commission notes that several parties have refreshed the record in response to the public notices. The Commission will proceed to address these petitions for reconsideration in upcoming orders.

III. Ordering Clause

4. Pursuant to the authority contained in sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151 and 154(i), and § 1.429 of the Commission's rules, the petitions for reconsideration of the *Universal Service First Report and Order, Local Competition First Report and Order,* and *Local Competition Second Report and Order,* as listed in the attachments to this document, are dismissed as of February 12, 2002.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

ATTACHMENT A.—PETITIONS FOR RECONSIDERATION OF THE UNIVERSAL SERVICE FIRST REPORT AND ORDER

Commenter	Date filed
Ad Hoc	7/17/97
AirTouch Communications, Inc	7/17/97
Alaska Public Utilities Commission	7/17/97
Alaska Telephone Association	7/17/97
Alliance for Public Technology	7/14/97
ALLTEL	7/17/97
American Petroleum Institute	7/16/97
Arkansas Public Service Commission	7/16/97
Benton Foundation/Edgemont Neighborhood Coalition	7/23/97
Cellular Telecommunications Industry Association	7/17/97
Columbia Communications Corp	7/17/97
Comcast Cellular Communications, Inc	7/17/97
Fidelity Telephone Company	7/17/97
Florida Dept. of Education	7/17/97
Florida Dept. of Management Services	7/17/97
Florida Public Service Commission	7/16/97
GE American Communications, Inc	7/17/97
Georgia Dept. of Administrative Services—Info.Tech	7/17/97
General Communications, Inc	7/17/97
Global Village Schools Institute	6/25/97
GVNW	7/11/97
ITCs, Inc	7/17/97
Information Technology Assoc. of America	7/16/97
Iowa Telecommunications and Technology Commission	7/17/97
Kansas Corporation Commission	7/17/97
MCI Telecommunications Corporation	7/17/97
National Association of State Telecommunications Directors	7/17/97
National Exchange Carrier Association, Inc	7/17/97
New Jersey Division of the Ratepayer Advocate	7/17/97
New York Library Association	7/17/97
NEXTEL Communications, Inc	7/17/97
Ozark Telecom, Inc	7/17/97
Personal Communications Industry Association	7/17/97
ProNet Inc	7/17/97
Rural Telephone Companies	7/17/97
Sandwich Isles	7/17/97
Sprint Corp	7/17/97
Sprint Spectrum L.P.	7/17/97
Teletouch Licenses, Inc	7/17/97
TelHawaii, Inc	7/17/97
Texas Public Utilities Commission	7/16/97
Time Warner Communications Holdings, Inc	7/17/97
United Utilities	7/16/97
U.S. Catholic Conference, et al	7/17/97
US WEST	7/17/97
Vermont Public Service Board	7/17/97
Washington State Dept. of Information Services	7/17/97
Western Alliance	7/17/97

ATTACHMENT B.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION FIRST REPORT AND ORDER

Commenter	Date filed
Airtouch Paging, Cal-Autofone and Radio Electronic Products Corp	9/30/96
American Electric Power Service Corporation, et al	9/30/96
American Public Power Association	9/30/96
Association of American Railroads	9/30/96
Carolina Power & Light Company	9/30/96
Cellular Telecommunications Industry Association	9/30/96
Colorado Public Utilities Commission	9/27/96
Comcast Cellular Communications, Inc and Vanguard Cellular Systems, Inc	9/30/96
Consolidated Communications Telecom Services Inc	9/30/96
Consolidated Edison Company of New York, Inc	9/30/96
Cox Communications, Inc	9/30/96
Delmarva Power & Light Company	9/30/96
Duquesne Light Company	9/30/96
Edison Electric Institute, et al	9/30/96
Florida Power & Light Company	9/30/96
General Communication, Inc	9/30/96
Information Technology Association of America	9/30/96
Kalida Telephone Company, Inc	9/30/96
Local Exchange Carrier Coalition	9/30/96
Lower Colorado River Authority	9/30/96
Meek, Representative Carrie P	9/23/96
National Cable Television Association, Inc	9/30/96
Pacific Gas and Electric Company	9/30/96
Pennsylvania Power & Light Company	9/30/96
Pilgrim Telephone, Inc	9/30/96
Public Service Commission of Wisconsin	9/27/96
Public Utilities Commission of Ohio	9/30/96
Rand McNally & Company	9/30/96
Sprint Corporation	9/30/96
Teleport Communications Group Inc	9/30/96

ATTACHMENT B.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION FIRST REPORT AND ORDER—Continued

Commenter	Date filed
Texas Public Utility Commission	9/26/96
Time Warner Communications Holdings, Inc	9/30/96
UTC, The Telecommunications Association	9/30/96
Washington Utilities and Transportation Commission	9/30/96
Weldon, Representative Dave	9/23/96
WinStar Communications, Inc	9/30/96

ATTACHMENT C.—PETITIONS FOR RECONSIDERATION OF THE LOCAL COMPETITION SECOND REPORT AND ORDER

Commenter	Date filed
Airtouch Paging/PowerPage	10/7/96
Ameritech	10/7/96
AT&T	10/7/96
BellSouth Corp.	10/7/96
GTE Service Corp.	10/7/96
MCI Telecommunications Corp.	10/7/96
New York State Dept. of Public Service	10/7/96
NYNEX Telephone Companies	10/7/96
Rural Telephone Coalition	10/7/96
U.S. Telephone Association	10/7/96

[FR Doc. 02–3277 Filed 2–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–8663; Amdt. 195–75]

RIN 2127–AD56

Pipeline Safety: Hazardous Liquid Accident Reporting

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration.

ACTION: Final rule; correction.

SUMMARY: The Research and Special Programs Administration published a final rule in the **Federal Register** on January 8, 2002, regarding changes to the reporting requirements for hazardous liquid pipeline accidents. The effective date of this rule was inadvertently published as January 1, 2002. The correct effective date of this final rule is February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Little by phone at (202) 366–4569, by e-mail at *roger.little@rspa.dot.gov,* or by mail at the U.S. Department of Transportation (DOT), Research and Special Programs Administration, Office of Pipeline Safety, Room 7128, 400 7th Street, SW., Washington, DC 20590.

Correction

In the **Federal Register** issue of January 8, 2002, 67 FR 831, in the **DATES** heading, correct the effective date to ready February 7, 2002.

Issued in Washington, DC, February 6, 2002.

Ellen G. Engleman

Administrator.

[FR Doc. 02–3319 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 29
Tuesday, February 12, 2002

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE84

Small Business Size Regulations; Petroleum Refineries

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to modify the small business size standard for petroleum refiners for purposes of Federal Government procurement. SBA proposes to increase the capacity component of the size standard from 75,000 barrels per day (bpd) to 155,000 barrels per calendar day (bpcd); to define the capacity measure in bpcd; and to measure a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. The proposed revision is a better definition of the size of business in this industry that SBA believes should be eligible as small refiners for Federal procurement programs.

DATES: SBA must receive comments on or before March 14, 2002. SBA will make all public comments available to any person or concern upon request.

ADDRESSES: Address all comments concerning this proposed rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW., Washington, DC 20416, or via e-mail to *sizestandards@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618. You may also e-mail *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

SBA proposes to modify the small business size standard for Petroleum Refineries (North American Industry Classification System [NAICS] 324110) for purposes of Federal Government procurement. SBA proposes (1) to increase the capacity component of the standard from 75,000 barrels per day (bpd) to 155,000 barrels per calendar day (bpcd); (2) to clarify that the capacity component is measured in bpcd as defined by the U. S. Department of Energy, Energy Information Administration (EIA), rather than bpd; and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA.

The current small business size standard for NAICS 324110, Petroleum Refineries (formerly Standard Industrial Classification [SIC] 2911, Petroleum Refining), is 1,500 employees.[1] The 1,500 employee size standard applies to all Federal Government programs that provide benefits to concerns that qualify as a small business concern. SBA does not propose to modify the 1,500 employee size standard.

For purposes of Federal Government procurement, to qualify as a small business, there is an additional size standard component that specifies the maximum refining capacity of a small business. Footnote 4 to the Table of Small Business Size Standards (13 CFR 121.201) states:

> NAICS code 324110—For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

SBA received a request from a small petroleum refiner to delete the bpd part of the size standard for Petroleum Refineries. The requestor has two concerns. First, the requestor is concerned about the apparent domination of the refining industry by large refiners. Over the past ten years, larger refiners have merged with and acquired other concerns, both large and small, and formed large joint ventures. The requestor complained that under the current 75,000 bpd size standard, many smaller refiners cannot grow, merge with or acquire other refiners without losing their small business status. In the event a small refiner does so, and thereby loses its small business status, it will remain very small compared to larger refiners. Without the opportunity to participate in Federal Government procurement as small businesses, it would still be too small to compete successfully for larger Federal contracts in the open market.

Second, the requestor is concerned about the decline in small refiners' share of the U.S. total refining capacity. The requestor states that small refiners' share of the total U.S. capacity has declined from 7.8 percent in 1975, to 7.1 percent in 1984, to 6.7 percent in 1990, and to 4.1 percent in 1999. In twenty-four years, this is a decline of almost 50 percent.

Based on these concerns, SBA believes it should re-evaluate the capacity component of the Petroleum Refineries size standard as the small petroleum refiner requested. However, it does not agree that the refining capacity component should be eliminated from the size standard for Federal Government procurement. When SBA had proposed eliminating this component in 1991, comments strongly favored retaining it. Those commenters stated that there is no meaningful relationship between barrel capacity and the number of refinery employees. Thus, they claimed, eliminating the bpd requirement would not accurately reflect a small petroleum refiner. This was due to varying degrees of automation among refineries as well as the extent to which firms are engaged in non-refining activities. Based on SBA's industry analysis for this proposed rule, SBA believes that this remains the general opinion of most refiners.

Furthermore, refinery capacity is a standard reference for measuring refiners among one another, and it is a measure that is unique to the refining industry. EIA has used this measure for many years, and SBA believes it

[1] Effective January 1, 1997, the Federal Government, for statistical purposes, replaced the SIC system with NAICS. For purposes of small business size standards, SBA adopted the definitions of NAICS for all industries effective October 1, 2000. NAICS is a new statistical system, and there were changes to the descriptions of many industry structures in the shift from SIC to NAICS. According to *North American Industry Classification System United States, 1997,* the entire SIC 2911 is related to NAICS 324110. NAICS 324110 ''comprises establishments primarily engaged in refining crude petroleum into refined petroleum. Petroleum refining involves one or more of the following activities: (1) Fractionation; (2) straight distillation of crude oil; and (3) cracking.'' The size standard for NAICS 324110, Petroleum Refineries, remains the same as it was for SIC 2911, Petroleum Refining.

continues to be a useful and relevant size standard component for Federal procurement purposes. The 1,500 employee size standard applies to refiners for all other programs, but refinery capacity is directly related to refiners' ability to respond to Federal procurement of their petroleum products. Regardless of a refiner's number of employees, SBA does not believe that to qualify as a small refiner competing against other small refiners for Federal petroleum contracts that there should be no limit to its refining capacity.

History of the Size Standard

SBA first established a small business size standard for Federal Government procurement of petroleum products in 1955. The size standard was 1,000 employees with a refining capacity not to exceed 30,000 bpd. With this size standard, small businesses accounted for 7.8 percent of the total U.S. refining capacity. By 1975, this small business share of total capacity had fallen to 5.1 percent. Therefore, SBA increased the size standard to 1,500 employees with a 50,000 bpd capacity. This restored small business share to 7.8 percent of total U.S. capacity. By 1990, however, the small business share had again declined, to 6.7 percent of the total U.S. refining capacity.

On May 3, 1991, SBA proposed in the **Federal Register** to eliminate the 50,000 bpd component of the size standard entirely (56 FR 20832). SBA intended to simplify the size standard and make it the same as the single size criterion used for other industries and for other Federal Government programs. SBA believed that this would allow refining concerns that were slightly below the capacity limit to expand their refining facilities without losing their small business status. SBA received 24 comments to this proposal, 22 of which argued to retain the bpd component.

Therefore, on January 7, 1992, SBA proposed in the **Federal Register** (57 FR 541) to increase the bpd component from 50,000 bpd to 75,000 bpd. SBA received comments to this proposal that were mixed on the question of whether or not to increase the bpd component.

On May 1, 1992, SBA published in the **Federal Register** (57 FR 18808) its final rule adopting the 75,000 bpd component of the size standard. SBA did not change the 1,500 employee size standard. SBA has not changed or proposed to change the petroleum refiner size standard since then.

Size Standards Methodology

Congress grants SBA discretion on how to establish detailed small business size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program,'' available on SBA's website at *http://www.sba.gov/library/soproom.html,* sets out four evaluation factors for establishing size standards:

1. Industry structure and economic characteristics;
2. The impact of different size standards on SBA programs and their objectives;
3. Whether a size standard excludes businesses that are dominant in the industry; and,
4. Other factors that SBA determines may also apply.

SBA's research, public comments, industry uniqueness, or how or to what program(s) the size standard applies may require SBA to consider special factors or to modify how it generally assesses a particular size standard, but that is not the norm. If SBA does modify its methodology, it explains both the general methodology and how SBA assessed the size standard for the case at hand. SBA applies no formulas or weighting to the industry factors it analyzes. Below SBA explains how it analyzes the economic characteristics of an industry, the impact of a size standard on SBA programs, and how it evaluates whether a concern at or below a size standard could be considered dominant in the industry under review.

Industry Analysis

The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (U.S.C. 632(a)(3)). Two ''anchor size standards'' apply to most industries—500 employees for manufacturing industries and $5 million for nonmanufacturing industries. Anchor size standards are presumed appropriate for an industry unless larger concerns are much more significant within that industry than the ''typical industry.''

Since this rule is evaluating the capacity component of the Petroleum Refineries size standard, SBA cannot compare it to any other industry. The industry analysis will evaluate changes in the Petroleum Refineries industry over the last 10 years and their implications for the current 75,000 bpd size standard. SBA's analysis assesses data on the characteristics of the sixty-five refiners listed in *Petroleum Supply Annual 2000,* Volume 1, Table 40, published by EIA. The *Petroleum Supply Annual 2000* is available on EIA's website, http://www.eia.doe.gov/. Table 40 ranks refiners by their total Operable Crude Oil Distillation Capacity, as of January 1, 2001. Virtually all data used to compare the relative sizes of refiners reflect refiners' capacity. The analysis will consist of the same factors as other size standard analyses.

In 13 CFR 121.102 (a) and (b), SBA lists the primary evaluation factors that describe the structural characteristics of an industry—average concern size, distribution of concerns by size, start-up costs and industry competition. SBA also analyzes the possible impact of a size standard revision on SBA programs. These five factors are the most important ones that SBA evaluates when establishing a size standard. However, SBA will also consider and evaluate other information that is relevant to determining a size standard for a particular industry. Public comments to proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average concern size. This is generally the total industry receipts, number of employees, or other measure of size divided by the number of concerns in the industry. The higher the average concern size the higher size standard that can be supported for the industry. For this proposed rule SBA has determined the average sized refiner from Table 40, ''Refiners' Operable Atmospheric Crude Oil Distillation Capacity as of January 1, 2001,'' from Petroleum Supply Annual 2000, Volume 1, published by EIA.

2. Distribution of concerns by size. SBA usually examines the proportion of industry receipts, employment or other economic activity accounted for by concerns of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller concerns, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of concerns indicates that economic activity is concentrated among the largest concerns in an industry. In this rule SBA compares the size of refiners based on their total petroleum refining capacity. To demonstrate industry changes from when SBA last changed this size standard in 1992, SBA also compares current data on the distribution of refiners by size with data from 1989 and 1990.

3. Start-up costs. These affect a concern's initial size because entrants to an industry must have sufficient capital to start and maintain a viable business. To the extent that concerns entering an industry have greater financial

requirements than concerns in other industries, SBA considers a higher size standard. The requestor has stated that the bpd capacity constrains small refiners' growth and expansion. In this rule, rather than looking at refinery start-up costs, SBA considers refiners' ability to consolidate their resources. This proposed rule, if adopted, should assist them in expanding their resources, because they will be able to share and thereby reduce the concomitant capital costs of expansion.

4. Industry competition. SBA normally assesses this by measuring the proportion or share of industry receipts obtained by concerns that are among the largest concerns in an industry. In this proposed rule, SBA compared the total capacity of the four and the eight largest refiners. These comparisons are generally referred to as ''four-firm'' and ''eight-firm'' concentration ratios. When a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a higher size standard.

5. Competition for Federal procurements and SBA Financial Assistance. SBA evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

SBA usually assesses the impact of a proposed size standard on other SBA programs to determine whether the current size standard may restrict the level of financial assistance to concerns in that industry. The bpd capacity limit that this proposed rule addresses applies only to the Federal Government's procurement of petroleum products. Therefore, this proposed change, if adopted in final form, will have no affect on SBA financial assistance or other programs.

Average Size Refiner and Refinery

Based on data published by EIA from 1990 to 2000, there was a marked increase in the average refiner size, from 144,185 bpcd to 254,029 bpcd (see Table 1, below). Similarly, average refinery size also increased significantly between these years, from 75,961 bpcd to 104,506 bpcd. These changes reflect both fewer refineries and fewer refiners at the end of 2000 than in 1990 while total combined capacity has increased. Over the last 10 years, mergers, acquisitions, joint ventures, and shutdowns of refineries have resulted in fewer refiners. The increases in average refinery and refiner size support an increase to the current refinery capacity component of the size standard.

TABLE 1

	1990	2001	Percent change
Number of Refiners	108	65	(40.0)
Number of Operable Refineries	205	158	(22.9)
Total U.S. Capacity (bpcd)	15,571,966	16,511,871	6.0
Average capacity per refiner (bpcd)	144,185	254,029	76.2
Average capacity per refinery (bpcd)	75,961	104,506	37.5

Source: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''

Note: Table 1 data, and all further data in this proposed rule, are based on and refer to ''barrels per calendar day'' (bpcd), as EIA defines the term, rather than ''bpd,'' as used in SBA's existing size standard.

Distribution of Refiners and Refineries by Size

The distribution of refiners by capacity since the last change to the size standard shows a significant trend towards larger refiners in the industry. Table 2, below, compares end of 1989 data used in the 1992 size standard change with data as of January 1, 2001.

TABLE 2

Bpcd	Number of refiners		Number of refineries		Percent of total U.S. capacity	
	1989	2001	1989	2001	1989	2001
>1,000,000	3	4	22	29	24.7	34.9
500,001–1,000,000	6	9	29	42	27.7	36.7
200,001–500,000	12	7	36	19	23.9	13.8
100,001–200,000	12	10	25	17	11.3	8.8
50,001 to 100,000	9	6	13	7	4.2	1.8
30,001 to 50,000	15	7	17	10	4.0	2.1
≤30,000	51	22	57	26	4.2	1.9
Totals	108	65	199	150	100.0	100.0

Source for 2001 data: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''
Source for 1999 data: U.S. Department of Energy, *Petroleum Supply Annual,* 1989.

Examining the distribution of refineries shows the same long-term trends. Refineries of 50,000 bpcd or less represent only 35.9 percent of total refineries in 2001 as compared to 53.8 percent in 1989 (see Table 3, below).

TABLE 3

Refinery size	Percent of total operable refineries	
	1989	001
Refineries > 100,000 bpcd	27.6	37.9
Refineries 50,001 to 100,000 bpcd	18.6	26.1
Refineries 10,001 to 50,000 bpcd	34.7	26.1
Refineries ≤ 10,000 bpcd	19.1	9.8
Totals	100.0	100.0

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

This increased share of capacity among large refineries is similar to the trend SBA observed when it last studied this industry for the 1992 size standard change. Table 4, below, compares the 1979 to 1989 changes with the 1989 to 2001 changes.

TABLE 4

Refinery size	Changes in percent of total operable refineries	
	1979–1989	1989–2001
Refineries > 100,000 bpcd	8	5.5
Refineries 50,001 to 100,000 bpcd	−16	8.1
Refineries 10,001 to 50,000 bpcd	−43	−42.0
Refineries ≤ 10,000 bpcd	−63	−60.5

Source for 1989–2001 data: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''
Source for 1979–1999 data: U.S. Department of Energy, *Petroleum Supply Annual,* 1989.

Small refiners, those who meet the current 75,000 bpcd size standard, represent a very small portion of total industry's U.S. capacity. Table 5, below, presents the percentages of total U.S. refining capacity for those refiners above and below the current 75,000 bpd size standard in 2001. The current small refiner share of total industry capacity is 5.8 percent, well below the historical share of approximately 7.5 percent.

TABLE 5

Refiners	Number of bpcd	Percent of total bpcd
Total U.S. Capacity—65 refiners	16,595,371	100.0
Total for the 30 refiners > 75,000 bpcd	15,635,960	94.2
Total for the 35 refiners ≤ 75,000 bpcd	959,411	5.8

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

Furthermore, there is significant disparity between the average capacity of all refineries owned and/or operated by the thirty largest refiners and the average capacity of refineries owned and/or operated by the thirty-five small refiners. Table 6, below, shows the differences between average capacities of small and large refiners in 2001.

TABLE 6

Refiner	Average Number of bpcd	Number of refineries
Total U.S. Capacity—65 refiners	107,067	155
Average for the 30 refiners > 75,000 bpcd	146,130	107
Average for the 35 refiners ≤ 75,000 bpcd	19,388	48

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

SBA concludes that these continuing trends towards larger refiners in the industry and the reduced small refiner share of industry capacity support an increase to the capacity component of the petroleum refineries size standard.

Industry Concentration

The refining industry in the U.S. has undergone substantial restructuring since SBA last increased the size standard. The result has been fewer but larger refiners with fewer but larger refineries. At the same time total U.S. refining capacity is greater. With this industry realignment and increased U.S. petroleum refining capacity, the total U.S. refining capacity has become increasingly concentrated among a few of the largest refiners. Since 1989, the top four and top eight refiners have increased their share of total industry refining capacity (see Table 7, below). The increasing trend of industry concentration further supports an

increase to the current capacity size standard.

TABLE 7

Refiners	Percent of U.S. refining capacity as of January 1	
	1990	2001
Four largest	31.0	34.9
Eight largest	49.1	54.3

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

Capital Costs

The Petroleum Refineries industry is one of the most capital intensive industries in the economy. In recent years, increasing environmental regulations (such as those required by the Clear Air Amendments of 1990) have required refiners to make substantial investments in new equipment. For example, the Environmental Protection Agency (EPA) has estimated that its regulations pertaining to sulfur content in gasoline will require refiners, on average, to spend approximately $44 million to remove sulfur during the refining process and an additional $16 million per refinery for operating costs associated with desulfurization unit (see 65 FR 6776, dated February 10, 2000). EPA is also considering significant reductions in the use of methyl tertiary butyl ether that will require additional capital investments (see Oil and Gas Journal, dated March 27, 2000).

Environmental requirements have led, in part, to the consolidations resulting in a fewer number of small refiners in the industry over the last 10 years. Refiners have increased operations to spread the cost of environmental compliance across large volumes and to lower costs through operating efficiencies. The expected environmental demands on the industry and the ability of small refiners to spread investment costs across large volumes is another indicator that SBA should increase its refining capacity size standard.

To reduce costs larger refiners have formed downstream mergers and joint ventures, including some with non-U.S. producers. They thereby reduce their overall investment costs in their refineries. By doing so, they join not only their refining operations, but their marketing operations as well. Joint ventures allow refiners to share these costs without the problems associated with mergers and acquisitions. The small refiners closest to the current size standard, that is those small refiners with capacities not far below 75,000 bpcd, cannot enter into the same type of agreements without jeopardizing, and likely losing, their small business size status. SBA believes that increasing the bpcd capacity limit will allow these refiners to form joint ventures for similar purposes without losing their small business status for Federal procurement programs.

Federal Government Procurement Since 1990

Small refiners' share of Federal Government procurements of petroleum has moderately decreased since 1989. Federal Procurement Data Center (FPDC) data for 1989, which SBA analyzed prior to revising the size standard in 1992, indicated that small businesses received about 16 percent of those procurements. For fiscal years 1998–2000, small business share declined to as low as 10.5 percent in FY 1999, while averaging 13.8 percent for the three years (see Table 8, below). Although the decline in share of Federal petroleum contracts to small refiners has not been large, an increase to the size standard will likely maintain the share of small refiners or restore it to previous levels.

TABLE 8

	Total federal petroleum procurements ($,000)	Small business amount ($,000)	Small business amount (Percent)
1998	$2,123,529	$327,478	15.4
1999	1,902,269	199,994	10.5
2000	2,979,095	438,073	14.7
Three year total	7,004,893	965,545	.....
Three year average	2,334,964	321,848	13.8

Sources: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40; EIA, *Petroleum Supply Annual 1999,* Volume 1, Table 40; and EIA, *Petroleum Supply Annual 1998,* Volume 1, Table 40.

SBA's Proposals To Revise the Size Standard

SBA is proposing to increase the 75,000 bpd component of the size standard to 155,000 bpcd for purposes of Federal Government procurement. SBA is proposing this increase for the following reasons. Refineries with 155,000 bpcd or less in petroleum capacity account for 7.6 percent of total U.S. petroleum refining. This size standard restores the share of small refiners to approximate the same level that resulted from the 1992 increase to 75,000 bpd. As stated above (see Table 3, above), small refiners currently account for 5.8 percent of total U. S. capacity.

Currently defined small refiners will be able to grow, merge, joint venture or create other forms of consortia, and at the same time retain their small business status. The proposed increase to 155,000 bpcd is slightly more than double the current size standard refining capacity component. At this level, a small refiner could operate a refinery equal to the size of the average refinery of the 30 large refiners in the industry January 1, 2001 (see Table 6, above). The proposed level should enable small refiners to expand to

achieve operational efficiencies needed to accommodate increasing environmental requirements. An increase to a lower capacity, while also allowing expansion, may be too limiting for small refiners to achieve meaningful operating efficiencies.

Any refiner at or below 155,000 bpcd and with less than 1,500 employees will qualify as a small refiner. Refiners that have more than 1,500 employees or have capacities over 155,000 bpcd generally have significant operations outside of petroleum refining.

SBA proposes to clarify the capacity measure for determining small business size status by replacing the term ''barrels per day'' with the term ''barrels per calendar day.'' SBA believes the term ''barrels per day'' does not reflect the precise intent of the regulation, and can raise questions about whether SBA means ''barrels per calendar day'' or ''barrels per stream day.'' SBA proposes to accept and use ''Barrels per Calendar Day'' as EIA has most recently defined it in the glossary to Petroleum Supply Annual 2000, Volume 1. EIA defines ''barrels per calendar day'' as follows:

Barrels Per Calendar Day. The maximum number of barrels of input that can be processed during a 24-hour period after making allowances for the following limitations:

The capability of downstream facilities to absorb the output of crude oil processing facilities of a given refinery. No reduction is made when a planned distribution of intermediate streams through other than downstream facilities is part of a refinery's normal operation;

The types and grades of inputs to be processed; the types and grades of products expected to be manufactured;

The environmental constraints associated with refinery operations;

The reduction of capacity for scheduled downtime such as routine inspection, mechanical problems, maintenance, repairs, and turnaround; and

The reduction of capacity for unscheduled downtime such as mechanical problems, repairs, and slowdowns.

SBA proposes to clarify further the capacity measure for determining small business size status by adding to footnote 4 the phrase ''total Operable Atmospheric Crude Oil Distillation Capacity'' as EIA uses the term in Petroleum Supply Annual 2000, Volume 1. EIA defines ''Operable Capacity'' as follows:

Operable Capacity. The amount of capacity that, at the beginning of the period, is in operation; not in operation and not under active repair, but capable of being placed in operation within 30 days; or not in operation but under active repair that can be completed within 90 days. Operable capacity is the sum of the operating and idle capacity and is measured in barrels per calendar day or barrels per stream day.

EIA defines Atmospheric Crude Oil Distillation'' as follows:

Atmospheric Crude Oil Distillation. The refining process of separating crude oil components at atmospheric pressure by heating to temperatures of about 600° to 750° F (depending on the nature of the crude oil and desired products) and subsequent condensing of the fractions by cooling.

By stating ''155,000 bpcd of total Operable Atmospheric Crude Oil Distillation Capacity,'' it will be clear that the size standard includes both a concern's operating and its idle capacity. This is consistent with EIA that uses the total of operating and idle capacities in Petroleum Supply Annual 2000, Volume 1, Table 40, ''Refiners'' Operable Atmospheric Crude Oil Distillation Capacity,'' and in earlier years as well.

Dominant in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no firm at or below the proposed size standards for petroleum refiners would be of a sufficient size to dominate its field of operation. The largest firm at the proposed size standard level generates less than 0.9% of total U. S. refining capacity. This level of market share effectively precludes any ability for a refiner at or below the proposed size standard to exert a controlling effect on this industry.

Alternatives to 155,000 Bpcd That SBA Considered

SBA considered three alternatives to its proposal. Each of these is discussed below.

1. Delete the capacity requirement, the request for which prompted SBA's examination of the size standard. The introduction to this rule explain the reasons why SBA has elected to increase the capacity component rather than eliminating it. SBA, however, welcomes comments on the advantages and disadvantages of retaining or eliminating the capacity component.

2. Propose a capacity between 75,000 bpcd and 155,000 bpcd. SBA estimates that capacity below 155,000 bpcd would not restore small businesses to the level they had before the size standard was last increased since no refiners would gain small business status. A 155,000 bpcd capacity limit includes all refiners that have 1,500 employees or less. At 155,000 bpcd, two additional refiners would qualify as small. Further, a capacity limit below 155,000 bpcd may be insufficient to allow small refiners to grow, merge, or otherwise share resources, without losing their small business size eligibility. This would defeat the main purpose of increasing the size standard.

3. Propose higher capacity limits. SBA considered capacities above 155,000 bpcd. SBA believes that 155,000 bpcd capacity is sufficient to enable small refiners to merge or form alliances and thereby reduce their costs while increasing the profitability of their activities. Further, SBA estimates that a higher bpcd capacity would enable no more refiners to become eligible as small businesses, because refiners with capacities above 155,000 bpcd have, to the extent SBA could determine, more than 1,500 employees.

Comments Requested

SBA requests comments on its proposal to increase the capacity component of the size standard from 75,000 bpd to 155,000 barrels per calendar day (bpcd) total Operable Atmospheric Crude Oil Distillation. While SBA proposes this numerical capacity limit for small refiners to qualify as small businesses, SBA will consider the other alternatives as well, including the elimination of a bpcd limit, if comments warrant SBA's doing so. SBA also requests comments on its proposals to clarify the size measure by adopting the more precise term of ''barrels per calendar day'' in place of ''barrels per day.'' SBA also requests comment on its proposal to measure in bpcd a refiner's total Operable Atmospheric Crude Oil Distillation capacity. Specifically, SBA requests comments on the following issues:

1. Whether SBA should eliminate the capacity component, as requested, and the reasons why having no capacity limit as a component of the standard would be better for small refiners than retaining one.

2. Whether 155,000 bpcd is sufficient capacity for refiners to grow, merge, consolidate or otherwise share resources for Federal Government procurement,

without losing their small business eligibility.

3. Whether SBA should adopt a capacity that is higher or lower than 155,000 bpcd. Commenters who recommend an alternative bpcd limit should also provide reasons why they believe their recommended capacity would be a more appropriate size for this industry for purposes of Federal Government procurement.

4. Whether SBA's estimate of the number of additional refiners that may gain eligibility as small refiners, as well as SBA's estimate of their capacity, accurately reflects the possible result of this proposed change.

5. Whether an increase to 155,000 bpcd would have any adverse affects on currently defined small refiners.

6. Whether SBA's proposal to adopt ''barrels per calendar day'' to replace ''barrels per day'' is acceptable.

7. Whether SBA's proposal to adopt as a uniform measurable capacity a refiner's total Operable Atmospheric Crude Oil Distillation as used by EIA is acceptable.

8. Whether SBA should establish the 155,000 bpcd and 1,500 employees size standards to all Federal programs using a small business definition for a small petroleum refiner instead of just to Federal Government procurement. If SBA receives favorable comments on this, SBA will consider issuing a separate proposed rule on the issue.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. The rule affects Federal Government agencies purchasing refined petroleum products and the businesses that compete in selling petroleum products to the Federal Government. Increasing the 75,000 bpcd size standard to 155,000 bpcd will enable small refiners to expand their refining operations or to merge with other small refiners and continue to compete for Federal petroleum procurements set aside for small businesses or for the 8(a) and HUBZone Empowerment Contracting Programs, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Also, two refiners may obtain small business status under the proposed size standard allowing them to compete for set-aside petroleum procurements. Federal agencies could benefit from the higher size standards if the newly defined and expanding small refiners compete for more set-aside petroleum procurements. The larger base of small refiners would likely increase competition and lower the prices on set-aside petroleum procurements. A higher size standard may also influence Federal agencies to set aside more petroleum procurements. If procurements switch from competition among all sources to competition among only small businesses, prices could increase to the Federal Government. SBA believes that price increases associated with set-aside procurements would be minimal since set-asides must be award at fair and reasonable prices. The increased size standard will allow, and possibly encourage, small refiners to increase their operational efficiencies without jeopardizing their small business status. Theses expanding small refiners would become more competitive and thereby result in lower prices to the Federal Government and to private sector customers.

The higher size standard may have distributional effects among large and small refiners. Although the actual outcome of the gains and loses among small and large refiners cannot be estimated with certainty, several trends are likely to emerge. The newly defined and expanding small refiners may obtain petroleum contracts from what would have been awarded to currently defined small refiners. If Federal agencies were to set aside more procurements for small businesses, this could allow currently defined small refiners to compete for more petroleum procurements and offset potential losses to the newly defined and expanding small refiners on other set-aside procurements. Large refiners would lose some Federal petroleum contracts to small refiners if Federal agencies decide to set aside more petroleum procurements. The potential loss of contracts to large businesses would be limited to the amount of petroleum the newly defined and expanding small refiners were willing and able to sell to the Federal Government. Small nonmanufacturers may also obtain additional petroleum contracts as a result of a higher petroleum size standard. On set-aside petroleum procurements, a small nonmanufacturer must supply the product of a small petroleum refiner. With a larger base of small refiners, nonmanufacturers would have access to a larger supply of petroleum products from small refiners. The potential gain of contracts to small nonmanufacturers would be limited to the amount of petroleum the newly defined and expanding small refiners were willing and able to supply through a third party as opposed to selling directly to the Federal Government.

The proposed rule, however, does not create a serious inconsistency or otherwise interfere with another agency's action; materially affect the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients; or raise novel, legal or policy issues arising out of legal mandates, President's priorities, or the principles set forth in EO 12866.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent possible under standards in Section 3 of the order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

Under the Regulatory Flexibility Act (RFA) SBA has determined that this rule as drafted, including the alternatives to the proposed standard, will not have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this rule addressing (a) the reasons and objectives of the rule; (b) SBA's description and estimate of the number of small entities to which the rule will apply; (c) the projected reporting, record keeping, and other compliance requirements of the rule; (d) the relevant Federal rules which may duplicate, overlap or conflict with the rule; and (e) alternatives considered by SBA.

(a) Reasons for This Action

As discussed in the supplemental information, this rule, if adopted, will better define a small refiner for purposes of Federal Government procurement of refined petroleum. It will include in the definition as small all U.S. refiners that have 1,500 employees or less. It will also increase the small refiners' share of the U.S. total refining capacity to approximately the level it was after SBA's last two increases to this standard. It will allow small refiners to respond to larger Federal Government procurement opportunities. At the same time they will be able to expand and grow by forming joint ventures and similar resource sharing arrangements

without losing their small business eligibility for Federal Government procurement.

(b) Objectives and Legal Basis for the Proposed Rule

SBA's objective is to define ''small refiner'' better and to enable small businesses to participate in more and larger Federal Government procurement opportunities. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards.

(c) Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

SBA estimates that there will be no more than two newly designated small businesses. Because SBA does not propose to change the 1,500 employee size standard, refiners will only gain eligibility if they have less than 155,000 bpcd as well as no more than 1,500 employees. With regard to refiners that have capacities in excess of 75,000 bpcd, SBA described in the **SUPPLEMENTARY INFORMATION** that it based its estimate of number of employees on 10Ks filed with the Securities and Exchange Commission, Annual Reports and other information available to the public.

Refiners that currently have less than 75,000 bpd capacities are unaffected by this proposed rule, except to the extent that they may take advantage of opportunities arising from this rule. Also, SBA does not believe there will be significantly increased competition that could harm small or other than small business refiners. On the contrary, small businesses will be able to bid on more and larger Federal procurements in a fashion much like the largest refiners, though on a smaller scale, proportionate to their sizes.

Federal procurement programs are voluntary, and this proposed rule, if adopted, will not impose any significant costs on any small business companies participating in Federal procurement programs. Further, the rule will, if adopted, not affect the amount of refined petroleum purchased by the Federal Government. Federal Government procurement dollars are expected to remain about the same. Since SBA estimates that no more than two refiners, not now small, could become eligible, they would have little impact on the distribution of total Federal procurement dollars. Furthermore, the two refiners are not currently participating in Federal procurement, according to FPDC data. In addition, since more smaller refiners will be able to share resources, they will be eligible for more Federal procurement dollars. However, given that all small refiners combined will still only account for 7.7 percent of total U.S. refining capacity, the impact on larger refiners will be negative but negligible, though it will be a positive and significant one on small refiners.

(d) Imposition of Additional Reporting or Recordkeeping Requirements on Small Businesses

This rule does not impose any new information collection requirements on small refiners or other small businesses, and therefore will impose none that could require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The proposed new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing the petroleum refiners' capacity size standard expands access to Federal Procurement programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(e) Relevant Federal Rules That May Duplicate, Overlap or Conflict With This Rule

This rule does not duplicate, overlap or conflict with any other Federal rules. This rule applies to the Federal Government's procurement of refined petroleum products only, and does not apply to any other Federal program for which a refiner would have to qualify as a small business.

(f) Alternatives That SBA Considered

SBA considered three alternatives to this rule, namely deleting the capacity requirement in its entirety, and capacities above and below 155,000 bpcd. SBA explains in the **SUPPLEMENTARY INFORMATION** above why it opted to propose 155,000 bpcd rather than another amount or none at all. SBA specifically asks for comments on each of these alternatives, however, and will consider an alternative if public comments support one of them in lieu of the proposed 155,000 bpcd.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for Part 121 is revised to read as follows:

Authority: Pub L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), 638, 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, under Subsector 324, the entry for NAICS Code 324110 is republished and footnote 4 is revised to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System Codes?

* * * * *

NAICS codes	NAICS description (N.E.C. = not elsewhere classified)	Size standard in number of employees or millions of dollars
*	*	*
324110	Petroleum Refineries	[4]1,500
*	*	*

Footnotes

* * * * *

[4] *NAICS code 324110*—For purposes of Federal Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 155,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

* * * * *

Dated: November 1, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3344 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 01N–0576]

Medical Devices; Reclassification of the Cutaneous Carbon Dioxide ($PcCO_2$) and the Cutaneous Oxygen (PcO_2) Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class II (performance standards) into class II (special controls). FDA is also proposing to reclassify the cutaneous oxygen (PcO_2) monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls) and is reproposing the reclassification of the cutaneous oxygen (PcO_2) monitor for all other uses from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' which would serve as the special control if this proposal becomes final.

These reclassifications are being undertaken on the agency's own initiative based on new information under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997.

DATES: Submit written or electronic comments on the proposed rule by April 15, 2002. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cutaneous Carbon Dioxide ($PcCO_2$) Monitor

In the **Federal Register** of July 25, 1988 (53 FR 27878), FDA issued for public comment the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel that FDA reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class III into class II. On December 9, 1988, FDA sent to all known manufacturers of the device a letter (order) that classified the cutaneous carbon dioxide monitor, and substantially equivalent devices of this generic type, from class III to class II. In the **Federal Register** of June 28, 1989 (54 FR 27160), FDA published a final rule reclassifying the cutaneous carbon dioxide monitor from class III (premarket approval) into class II (performance standards) and added new 21 CFR 868.2480 *Cutaneous carbon dioxide ($PcCO_2$) monitor*.

B. Cutaneous Oxygen (PcO_2) Monitor

In the **Federal Register** of November 2, 1979 (44 FR 63292), FDA published a proposal to classify 149 anesthesiology devices, including the cutaneous oxygen monitor (§ 868.2500). In the **Federal Register** of July 16, 1982 (47 FR 31130), FDA published a final rule classifying the cutaneous oxygen monitor into either class II or class III, depending on the intended use of the device. The cutaneous oxygen monitor intended for use in monitoring infant patients who are not under gas anesthesia was classified as class II (performance standards). This action was based on FDA's belief that there was sufficient data to show the device is safe and effective for this use and that a performance standard would provide reasonable assurance of safety and effectiveness of the device. The final rule also classified into class III the cutaneous oxygen monitor intended for all other uses, that is, in a noninfant patient or in any patient, including an infant, who is under gas anesthesia

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing section 515(i) of the act (21 U.S.C. 360e(i)), and providing deadlines for submission of the information. In response to that notice, on October 21, 1996, Radiometer Medical A/S submitted a request for reclassification of the cutaneous oxygen monitor for use in noninfant patients not under gas anesthesia.

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. Among the 38 preamendments devices was the cutaneous oxygen monitor intended for all uses other than in an infant patient who is not under gas anesthesia. An American Society for Testing and Materials standard was proposed as the special control. FDA invited interested persons to comment on the proposed rule by June 14, 1999. FDA received six comments and two requests for extension of the comment period for certain devices. One of the requests for extension of the comment period was from a manufacturer of the cutaneous oxygen monitor. The manufacturer recently withdrew this request. None of the comments addressed the cutaneous oxygen monitor.

In the **Federal Register** of March 31, 2000 (63 FR 17138), FDA published a final rule reclassifying 28 of the 38 devices for which it had proposed reclassification. FDA reopened the comment period for 6 of the 38 devices (Vascular graft prosthesis of less than 6 millimeters diameter, 21 CFR 870.3450; Pacemaker lead adapter, 21 CFR 870.3620; Annuloplasty ring, 21 CFR 870.3800; Cardiopulmonary bypass defoamer, 21 CFR 870.4230; Cardiopulmonary bypass arterial blood line filter, 21 CFR 870.4260; and Cardiopulmonary bypass oxygenator, 21 CFR 870.4350) for which it had proposed reclassification and intends to reopen the comment period for 3 other devices in the near future. The remaining of the 38 preamendments devices is the cutaneous oxygen monitor. FDA is, in this notice, reproposing the reclassification of the cutaneous oxygen monitor for all other uses from class III (premarket approval) into class II (special controls).

II. Proposed Rule

FDA is proposing to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor and the cutaneous oxygen (PcO_2) monitor intended for use in monitoring infant patients who are not under gas anesthesia, from class II (performance standards) into class II (special controls).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other

appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act (21 U.S.C. 360c(a)(1)(B)). At the time the cutaneous carbon dioxide ($PcCO_2$) monitor and the cutaneous oxygen (PcO_2) monitor intended for use in monitoring infant patients who are not under gas anesthesia were classified, 1987 and 1982 respectively, special controls were not a regulatory option. FDA has now developed a draft guidance and is proposing to make it the special control for these products.

FDA is also reproposing the reclassification of the cutaneous oxygen monitor for all other uses from class III (premarket approval) into class II (special controls). In the original March 15, 1999, proposal, FDA had announced its tentative determination that classification into class II with four consensus standards as the special controls would provide reasonable assurance of the safety and effectiveness of the cutaneous oxygen monitor. The agency received no comments on the proposed reclassification of the cutaneous oxygen monitor. Under the SMDA authority, FDA is now proposing a guidance document as the special controls.

FDA is identifying the guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' that would serve as the special control for the cutaneous oxygen (PcO_2) monitor for both intended uses and for the cutaneous carbon dioxide ($PcCO_2$) monitor, if this proposal becomes final.

The draft guidance document sets forth the information FDA believes should be included in a 510(k) for these devices. FDA has identified the following as the risks to health presented by these devices (first column of the table below). The second column identifies the portions of the guidance document that address these risks to health. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the guidance document, or an acceptable alternative, is necessary to provide reasonable assurance of the safety and effectiveness of these devices.

TABLE 1.

Identified Risk	Recommended Mitigation Measures
Electrical Shock	Electrical Safety Standards
Electromagnetic Interference	Electromagnetic Compatibility Standards
Toxicity Tissue Reactivity	Biocompatibility and Sterility Guidance
Burns	Biocompatibility and Sterility Guidance
Inaccurate Measurement	Performance Testing Requirements

III. Special Controls

The proposed special control for these devices is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA.'' FDA is announcing the public availability of the draft guidance in a notice published elsewhere in this issue of the **Federal Register** and invites interested persons to comment.

IV. Proposed Dates

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that these classification actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act. Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers because most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposed rule by April 15, 2002. Submit two copies of any comments, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed rule and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 868 be amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2480 is amended by revising paragraph (b) to read as follows:

§ 868.2480 Cutaneous carbon dioxide ($PcCO_2$) monitor.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Final Guidance for Industry and FDA.''

3. Section 868.2500 is revised to read as follows:

§ 868.2500 Cutaneous oxygen (PcO_2) monitor.

(a) *Identification.* A cutaneous oxygen (PcO_2) monitor is a noninvasive, heated sensor (e.g., a Clark-type polargraphic electrode) placed on the patient's skin that is intended to monitor relative changes in the cutaneous oxygen tension.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA.''

Dated: January 29, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–3281 Filed 2–11–02; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 89

[Public Notice 3843]

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, as amended, the Department of State is issuing a proposed rule updating the list of countries whose laws regulations or practices prohibit crewmembers on U.S. ships from performing longshore work. Ships registered in or owned by nationals of the countries listed are ineligible for the reciprocity exception to the prohibition of longshore work by alien crewmembers in U.S. ports and waters.

DATES: Interested parties are invited to submit comments in triplicate by March 12, 2002.

ADDRESSES: Comments may be submitted to Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington, DC 20852–5816.

FOR FURTHER INFORMATION CONTACT: Stephen M. Miller, Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington DC 20852–5816; (202) 647–4915.

SUPPLEMENTARY INFORMATION: Section 258 of the Immigration and Nationality Act of 1952 (the ''Act''), 8 U.S.C. 1288, as added by the Immigration Act of 1990, Public Law 101–649, and subsequently amended, has the effect that alien crewmen may not perform longshore work in the United States. Longshore work is defined to include ''any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.'' The Act goes on, however, to define a number of exceptions to the general prohibition on such work.

Section 258(b)(2), entitled the ''Exception for safety and environmental protection,'' excludes from the definition of longshore work under this statute ''the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of Title 46 (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 4106 of the Oil Pollution Act of 1990, or sections 5103(b), 5104, 5106, 5107, or 5110 of Title 49 prescribed regulations which govern—(A) the handling or stowage of such cargo, (B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and (C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.''

Section 258(c), entitled the ''Prevailing practice exception,'' exempts particular activities of longshore work in and about a local port if there is a collective bargaining agreement covering at least 30 percent of the longshore workers in the area that permits the activities or if there is no such collective bargaining agreement and the employer of the alien crewmen files an appropriate attestation, in a timely fashion, that the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port. The attestation is required for activities consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel only if the Secretary of Labor finds, based on a preponderance of evidence which may be submitted by any interested party, that the performance of such particular activity by alien crewmen is not permitted under the prevailing practice in the area, is during a strike or lockout in the course of a labor dispute, or is intended or designed to influence an election of a bargaining representative for workers in the local port.

Section 258(d), the ''State of Alaska exception,'' provides detailed conditions under which alien crewmen may be allowed to perform longshore activities in Alaska, including the filing of an attestation with the Secretary of Labor at least 30 days before the performance of the work setting forth facts and evidence to show that the employer will make a bona fide request for U.S. longshore workers who are qualified and available, will employ all such workers made available who are needed, and has informed appropriate labor unions, stevedores, and dock operators of the attestation, and that the use of alien crewmembers is not intended or designed to influence an election of bargaining representatives.

Finally, Section 258(e), entitled the ''Reciprocity exception,'' allows the performance of activities constituting longshore work by alien crewmen aboard vessels flagged and owned in countries where such activities are permitted by crews aboard U.S. ships. The Secretary of State (hereinafter, ''the Secretary'') is directed to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crew member to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set forth in the Act.

The Department of State (hereinafter, ''the Department'') published such a list as a final rule on December 27, 1991 (56 FR 66970), corrected on January 14, 1992 (57 FR 1384). An updated list was initially published on December 13, 1993 (57 FR 65118), and was last published on June 13, 1996 (61 FR 29941).

The Department bases the list on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. On July 14, 2000, the Department sent instructions to U.S. Embassies and Consulates in countries, dependencies and other areas with seaports to determine whether crewmembers aboard U.S. vessels are prohibited from performing longshore work by law, regulation, or in practice in those countries. On the basis of the information received from the Embassies and Consulates, the Department is hereby issuing an amended list.

The list includes 24 new countries: Albania, Antigua, Barbados, Burnei, Chile, Cook Islands, Grenada, Kazakhstan, Latvia, Lebanon, Macau, Namibia, Nigeria, Oman, Russia, St. Christopher and Nevis, Singapore, Sudan, Syria, Tonga, Turkey, Tuvalu, United Arab Emirates and Vietnam. Two countries were dropped from the list because the most recent information indicates that they do not restrict longshore activities by crewmembers of U.S. vessels: Estonia and Micronesia.

Analysis of Comments

In a letter to the Secretary of State dated October 5, 2000 and through separate discussions, the International Longshore and Warehouse Union (hereinafter, ''ILWU'') has provided several comments based on the Department's updated list published on June 13, 1996 (69 FR 29941).

1. *Comment:* The ILWU believes that a country must be included on the list unless it is conclusively established by each seaport country that application of the reciprocity exception is warranted.

Reply: The Act directs the Department to maintain a list, of longshore work by particular activity, of countries where such activities are restricted by crewmembers aboard United States vessels. The reciprocity exception, by its terms, does not place the burden of proof on a particular party, including any seaport country, to establish that no restrictions on longshore activities exist. The Department has sought to compile a complete record of longshore law, regulation, and practice in all countries, states and other geographic entities with seaports.

2. *Comment:* The ILWU urges the Department to put all landlocked countries on the list, since the crews of U.S. vessels cannot do any longshore work in those countries.

Reply: The Department does not believe that it has excluded areas whose vessels are likely to call on U.S. ports and that have imposed restrictions on the longshore activities by crewmembers aboard U.S. vessels by law, regulation or practice. The Department does not believe that landlocked countries, which lack ports, restrict or in other ways govern, by law, regulation or practice, port activities. Interested parties are encouraged to provide the Department with information concerning any longshore rules, regulations, or practices that may exist in such landlocked areas.

3. *Comment:* The ILWU urges the Department to deny reciprocity to all countries with restrictive laws, regulations or practices, whether or not U.S. ships have called since January 1, 1996, and that the Department no longer request information about the calls of U.S. ships in foreign ports.

Reply: The Act instructs the Secretary of State to maintain a list of countries that restrict longshore activity by crewmembers aboard United States vessels. The Department believes that general restrictions by law, regulation or in practice on longshore activities by the crews of foreign vessels in the port of a third country would ordinarily apply equally to a U.S. vessel if a U.S. vessel were to call on the port of that country. The Department lists countries based on the existence of restrictions imposed by law, regulation or in practice irrespective of whether U.S. vessels have actually called at ports in the country in question and in future surveys will no longer ask whether a U.S. vessel has called on a foreign port.

4. *Comment:* The ILWU notes that the Department has not examined longshore policy in countries whose vessels are prohibited from calling at U.S. ports and believes that it would be preferable for the Department to make a determination as to these countries and to include them on the list where appropriate.

Reply: The Department is prepared to consider the situation with respect to such countries at the time their ships become eligible to enter U.S. waters, and revise the list as necessary.

5. *Comment:* The ILWU agrees with the Department's decision to seek information about International Labor Organization Convention 137 Concerning the Social Repercussions of New Methods of Cargo Handling in Docks (''ILO Convention 137''). The ILWU believes that the Convention by its terms plainly requires signatory countries, as a national policy, to preserve and promote existing longshore work for local dockworkers, and that these countries, as a consequence, prohibit or restrict foreign crewmembers from performing longshore activities. The ILWU therefore requests that the countries signatory to ILO Convention 137 be included on the reciprocity list.

Reply: In its most recent survey, the Department asked whether a country was a party to ILO Convention 137, and if so, whether that country restricted the longshore activities of foreign crewmembers in order to implement the Convention. Most countries party to Convention 137 replied that they did not restrict the longshore activities of foreign crewmembers as an implementation measure. The Department has listed those countries party to Convention 137 that have imposed restrictions on the longshore activities for foreign crewmembers.

6. *Comment:* In relation to the eligibility of Greece for the reciprocity exception, the ILWU expresses concern that the Department's treatment of Greece could imply that a blanket grant of reciprocity includes the right of an alien crewmember to perform longshore work ''on the docks.'' The ILWU takes the position that the reciprocity exception relates only to work ''on board'' vessels by foreign crewmembers.

Reply: The Department interprets the reciprocity exception to apply to all activities constituting longshore work, as defined by section 258(b) of the Immigration and Nationality Act:

* * * any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or coastal waters thereof.

The definition of longshore work does not restrict the scope of such activities to longshore work performed aboard a vessel and in fact, includes explicit reference to activities on the dock. Section 258(e) on the reciprocity exception does not contain a different, more limited definition.

7. *Comment:* The ILWU believes that Canada should be denied a reciprocity exception for all activities because, as its claims, Government of Canada regulations require employment validation for all work by foreign crewmembers that is not related to the operation of the ship. The ILWU contends that this requirement should result in the inclusion of Canada on the list, whether or not it is enforced for crewmembers aboard United States vessels.

Reply: The Government of Canada has advised the Department that pursuant to Canadian immigration regulations the requirement for employment authorization (work permit) does not apply to foreign nationals entering

Canada for the purpose of engaging in employment as a member of the crew of a ship of foreign ownership or registry engaged predominantly in the international transportation of goods or passengers. The Government of Canada notes that ship owners and operators may apply for a work permit if they are uncertain whether work performed by crewmembers is related to the operation of the ship, which requires for other than U.S. mariners the completion of an ''employment validation'' establishing that no Canadian residents are available to perform the work in question. The Government of Canada advises, however, that by virtue of Canadian immigration regulations crews of United States vessels are exempted from this employment validation requirement because of the reciprocity exception in U.S. law. In addition, owners and operators of U.S. ships report that the crews of their ships do in fact perform certain longshore activities in Canadian ports. The Department therefore does not believe that the requirement that foreign crewmembers obtain employment validation disqualifies Canada for a reciprocity exception because Canadian regulations specifically exempt crewmembers aboard United States vessels from the employment validation requirement. While the Department looks at the treatment of foreign vessels generally, Canada offers a clear example where national rules and regulations provide for treatment of foreign vessels that differs depending on the nationality of their crews.

8. *Comment:* The ILWU also expresses particular concern about the Department's decision to grant Canada a reciprocity exception for the ''operation of specialized self loading/unloading log carriers on the Pacific Coast.'' The ILWU believes that this finding is inconsistent with the decision of the U.S. Court of Appeals for the Ninth Circuit in *ILWU* v. *Meese*, 891 F.2d 1374 (9th Cir. 1989), that the immigration laws do not permit alien crewmen to perform this longshore activity in the United States.

Reply: The 1990 amendments to the Immigration and Nationality Act adding the reciprocity exception provides that for the purposes of 8 U.S.C. 1101(a)(15)(D)(i) (defining the class of nonimmigrant aliens to include ''alien crewman'') ''the term 'normal operation and service on board a vessel' does not include any activity that is longshore work (as defined in subsection (b) of [section 258 of the Act]), except as provided under subsection (c), (d), or (e)'' of section 258 of the Act. Section 258(e) provides that, subject to the determination of the Secretary of State pursuant to section 258(e)(2), the Attorney General shall permit an alien crew member to perform an activity constituting longshore work if two specific criteria are satisfied. Section 258(e)(2) directs the Secretary of State to compile and annually maintain a list, of ''longshore work'' by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. Section 258(b)(1) clearly defines the term ''longshore work'' to mean ''any activity relating to the loading and unloading of cargo, the operation of cargo-related equipment * * *'' The Department believes that the ''operation of specialized self loading/unloading log carriers on the Pacific Coast'' falls within the scope of this definition. The Department has also consulted extensively with U.S. diplomatic posts in Canada, U.S. carriers operating into Canada, union and industry officials and the Canadian Government. Two U.S. operators of specialized self-loading/unloading log carriers have confirmed that they are able to operate in Canadian Pacific ports and waters without restrictions on their U.S. crews and support the Department's determination that such activity is not prohibited by law, regulation or in practice in Canada.

9. *Comment:* The ILWU questions the Department's decision not to collect information about countries, dependencies, and other geographic entities with a population of less than 5,000 inhabitants.

Reply: The Department believes that this limit will capture all countries, dependencies, and other geographic entities whose vessels or whose nationals own vessels that are likely to call on U.S. ports . Interested parties are encouraged to provide the Department with information concerning longshore rules, regulations, or practices in areas not on the list.

10. *Comment:* The ILWU has asked the Department to scrutinize carefully the reports about China, Latvia, and Russia because crews on vessels from these countries have been doing longshore work that the ILWU believes should be reserved for U.S. longshore workers. The ILWU has provided the Department with information about Latvian law and regulations that the ILWU believes disqualifies Latvia for a reciprocity exception. According to the ILWU, any foreign worker, including crewmembers aboard U.S. vessels, paid in the territory of Latvia must have authorization from the Government of Latvia prior to performing any activity constituting longshore work.

Reply: The U.S. Embassy in Beijing reports that work and residence permits are required for any longshore activity by crewmembers on U.S. vessels calling on Chinese ports. Local agents must be used for loading and unloading cargo using gantry cranes, making fast and letting go the vessel, and husbanding cargo at port. The Department has therefore amended the listing for China to reflect these restrictions.

The Department asked the U.S. Embassy in Riga, Latvia to investigate the reports from the ILWU and to provide further information. According to the information supplied by the ILWU, the restrictions only apply to foreign workers who draw a salary from a Latvian company. Since the crewmembers of U.S. vessels are paid by U.S.-based owners or operators of the ships, the Latvian authorization requirement does not apply to the crews of U.S. vessels. The U.S. Embassy reports that Latvia does restrict longshore activities of foreign crews outside of their vessels. The Department has therefore added Latvia to the list to account for this restriction.

The U.S. Embassy in Moscow reports that collective bargaining agreements negotiated at the local level often give preference to local workers for longshore activities performed with the assistance of local port equipment. The Department has therefore amended the list for Russia to reflect these restrictions.

List of Subjects in 22 CFR Part 89

Longshore and harbor workers, Seamen.

For the reasons set out in the preamble, 22 CFR Chapter I is proposed to be amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

1. The authority citation for part 89 continues to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, 104 Stat. 4878.

2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Albania

(a) Cargo loading and discharge.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Algeria

(a) All longshore activities.
(b) Exception: Opening and closing of hatches.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Loading and discharge of cargo on board the ship if local labor is paid as if had done the work.

Antigua

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Argentina

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Australia (including Norfolk and Christmas Islands)

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Operation of cargo-related equipment and opening and closing of hatches in small ports where there is insufficient shore labor, and
(3) Rigging of ship's gear.

Bahamas

(a) Longshore activities on the pier.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo of less than 10 tons.

Belgium

(a) All longshore activities.
(b) Exception: Rigging of ship's gear.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Bermuda

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brazil

(a) Cargo handling.
(b) Operation of cargo-related equipment.
(c) Watchmen.
(d) Handling of mooring lines on the pier.
(e) Other longshore activities on the pier.
(f) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brunei

(a) All longshore activities.
(b) Exceptions: Longshore activities on board ship.

Bulgaria

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Mooring and line handling on board ship, and
(3) Loading and discharge of supplies for the crew's own needs, spare parts for small repairs and other non-commercial longshore activities.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized self-loading/unloading log carriers on the Pacific Coast,
(2) Operation of self-loading/unloading equipment and line handling by the crews of bulk vessels calling at private terminals,
(3) Opening and closing of hatches,
(4) Cleaning of holds and tanks,
(5) Loading of ship's stores,
(6) Operation of onboard rented equipment,
(7) Ballasting and deballasting, and
(8) Rigging of ship's gear.
(c) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the pier when the vessel is made fast or let go,
(2) Moving the vessel to place it under shoreside loading and unloading equipment,
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cap Verde

(a) All longshore activities.

Chile

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

China

(a) Longshore activities on shore.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, and
(2) Opening and closing of hatches.

Congo, Democratic Republic of

(a) All longshore activities.
(b) Exception: Operation of cargo-related equipment, when authorized by the Port Authority.

Cook Islands

(a) Longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Costa Rica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Cote d'Ivoire

(a) All longshore activities.

Croatia

(a) All longshore activities.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Dominica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Dominican Republic

(a) Local longshore workers get paid if crewmembers operate loading and unloading equipment.

Ecuador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,

(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Egypt

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the ship except to load and discharge cargo,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Handling of mooring lines on the ship.

El Salvador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment belonging to the vessel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Special operations requiring special expertise, provided that local port workers are paid.

Eritrea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Longshore activities for LASH vessels.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Operation of computerized off-loading equipment when local expertise is not available.

Finland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

France (including the French Antilles, French Guiana, French Polynesia, Mayotte, New Caledonia, Reunion, St. Pierre and Miquelon and Wallis and Fortuna)

(a) All longshore activities.
(b) Exceptions:
(1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Operation of cargo-related equipment to shift cargo internally,
(5) Handling operations connected with shipbuilding and refitting, and
(6) Offloading fish by the crew or personnel for the shipowner.

Gabon

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Gambia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Georgia

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greece

(a) Operation of shore-based equipment to load/unload a vessel.

Grenada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guatemala

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other activities with the prior approval of the port authority.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship except to load or discharge cargo,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Longshore activities in smaller harbors where there are no local port workers.

India

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities on pier or on land at port.

Israel

(a) All longshore activities.
(b) Exceptions, other than for loading or discharging cargoes to and from the pier:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Italy

(a) All longshore activities.
(b) Exceptions: Cargo loading, discharge and transfer upon presentation of the following information:
(1) Documentation listing the vessel's mechanical apparatus for cargo handling,
(2) A list of crewmembers who will perform the longshore activities, and
(3) An insurance policy guaranteeing recovery for damages to persons or property in relation to the longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of unusual hatches,
(2) Rigging of unusual ship's gear, and
(3) Longshore activities on foreign government vessels or ships engaged on a community development or humanitarian project.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kazakhstan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.
(b) Exceptions, when done in relation to ship safety, ship operation or supervisory

work to ensure that stevedoring is done correctly:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Kuwait

(a) Longshore activities on shore.

Latvia

(a) All longshore activities.
(b) Exceptions: activities on board the vessel.

Lebanon

(a) Longshore activities on shore.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) All longshore activities.

Macau

(a) Longshore activities on the pier.

Madagascar

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Malaysia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities on shore.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mauritania

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mauritius

(a) All longshore activities.
(b) Exceptions, other than for normal cargo handling activities:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mexico

(a) All longshore activities.
(b) Exception: Preparation of cargo handling equipment to be operated by local port workers.

Morocco

(a) Loading and discharge of merchandise.
(b) Rigging of ship from dockside.
(c) Other longshore activities not onboard vessel.
(d) Exceptions:
(1) Operation of onboard cargo related equipment, and
(2) Rigging of ship's gear onboard the ship, in coordination with local port workers.

Mozambique

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Namibia

(a) Longshore activities on shore.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Nauru

(a) All longshore activities.
(b) Exceptions, with the authorization of the Harbor Master:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities that take longer than 28 days of arriving in territorial waters.

Nicaragua

(a) All longshore activities.
(b) Exception: Opening and closing of hatches and rigging of ships gear if local workers are paid as if they had done the work.

Nigeria

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Instructing local employees on equipment.

Oman

(a) All longshore activities.
(b) Exceptions:
(1) Assisting in the operation of cargo related equipment if required,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Pakistan

(a) Longshore activities on shore.
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which pier workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Operation of sophisticated cargo-related equipment on container vessels,
(2) First opening and last closing of hatches and holds, and
(3) Cleaning of holds.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if not related to cargo handling,
(2) Rigging of ship's gear, if not related to cargo handling,
(3) Longshore activities for hazardous or polluting cargoes, and
(4) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores and Madeira)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel,
(9) Loading, discharge and disposal of merchandise in other boats, and
(10) Opening and closing hatches.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

Russia

(a) All longshore activities performed with local port equipment.
(b) Exceptions:
(1) Operation of cargo related equipment,

(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Christopher and Nevis

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Lucia

(a) Loading, discharge and handling of general cargo.
(b) Exceptions: activities on board the ship.

St. Vincent and the Grenadines

(a) All longshore activities.
(b) Exceptions: activities on board the ship.

Saudi Arabia

(a) All longshore activities on shore.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Sierra Leone

(a) All longshore activities.

Singapore

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore.
(b) Operation of cargo related equipment to load and discharge cargo.

Sweden

(a) All longshore activities.

Sudan

(a) All longshore activities.

Syria

(a) All longshore activities on shore.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches operated automatically, and
(2) Raising and lowering of ship's gear.

Tanzania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Thailand

(a) Longshore activities on shore.

Togo

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Tonga

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Trinidad and Tobago

(a) All longshore activities on shore.

Tunisia

(a) All longshore activities.
(b) Exception: Operation of specialized equipment that local port workers cannot operate.

Turkey

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Tuvalu

(a) Longshore activities on shore.

United Arab Emirates

(a) All longshore activities on shore.

Uruguay

(a) All longshore activities.
(b) Exceptions:
(1) Operation of on-board cranes requiring expert operation or at the master's request,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities on shore, at the discretion of the companies leasing and operating port facilities.

Vietnam

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo with on-board equipment when the port of call does not have the necessary equipment.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) Longshore activities on shore.

Dated: November 9, 2001.

E. Anthony Wayne,

Assistant Secretary, Bureau for Economic and Business Affairs.

[FR Doc. 02–3335 Filed 2–11–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Fixed and Floating Platforms and Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to March 27, 2002, the previous deadline of February 25, 2002, for submitting comments on the proposed rule published December 27, 2001 (66 FR 66851) that addresses fixed and floating offshore platforms and floating production systems (FPSs). These FPSs are variously described as column-stabilized units (CSUs); floating production, storage and offloading facilities (referred to by industry as ''FPSOs''); tension-leg platforms (TLPs); spars, etc. We are also incorporating into our regulations a body of industry standards pertaining to platforms and FPSs that will save the public the costs of developing separate and, in some cases, unnecessarily duplicative government standards.

DATES: We will consider all comments received by March 27, 2002, and we may not fully consider comments received after March 27, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia

20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Engineering and Operations Division, at (703) 787–1608.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subparts A, I, and J to incorporate by reference new documents governing fixed and floating platforms and new riser, stationkeeping, and pipeline technology. The request was based on the considerations that FPSs previously have not been directly addressed in 30 CFR 250 and that issues related to increasing the use of FPSs on the Outer Continental Shelf are complex. MMS agrees that more time is appropriate to ensure that all of the issues in this area are fully addressed.

Public Comments Procedures: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 17, 2002.

Paul E. Martin,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–3274 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010–AC94

Outer Continental Shelf Oil and Gas Leasing-Clarifying Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes clarifying amendments to regulations on Outer Continental Shelf (OCS) bidding systems. The proposed amendments make explicit that water depth and production timing on leases issued after 2000 and located in a field with leases issued earlier do not affect the way we determine the royalty suspension volume applicable to eligible leases on the field issued between 1996 and 2000.

DATES: We will consider all comments we receive by March 14, 2002. We will begin reviewing comments then and may not fully consider comments we receive after March 14, 2002.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments to the Department of the Interior, Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: *rules.comments®MMS.gov.* Reference OCS Oil and Gas Leasing—Clarifying Amendments in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: On February 23, 2001, we published final regulations on OCS Oil and Gas Leasing (66 FR 11512). This rule proposes clarifying amendments to those regulations. The proposed minor changes to the final regulations that are the subject of these clarifying amendments affect persons acquiring or holding deepwater oil and gas leases under 43 U.S.C. 1337(a). As published, the final regulations did not explicitly address the way we determine the royalty suspension volume for a field of both eligible and royalty suspension (RS) leases when first production in the field comes from an RS lease. Eligible leases are leases we issued with a royalty suspension during the period 1996 to 2000, while RS leases are leases we issued after the year 2000 with a royalty suspension. Without this correction, a lessee may be able to control production timing on the eligible lease so as to try to increase the field's royalty suspension volume above the levels set by Congress in the Deep Water Royalty Relief Act (DWRRA).

Our proposed clarification removes a half dozen restrictive words and adds a phrase to make explicit that water depth and production timing on an RS lease do not affect the way we determine the royalty suspension volume applicable to eligible leases in the same field. Specifically, we strike the phrase ''consisting only of eligible leases'' and add the phrase ''the water depths of eligible leases as in'' in § 260.114(d), prior to the reference therein to § 260.117(a), and by striking the word ''remaining'' in § 260.124(b)(1). By removing the word ''remaining'' we mean that all the production on an RS lease, not just that occurring after an eligible lease starts production (and, thereby, establishes the field's royalty volume) counts as part of the field's royalty suspension volume. Thus, the royalty suspension volume for a field is determined solely by the circumstances of the eligible leases that are assigned to the field when first production occurs from an eligible lease. Moreover, any royalty suspensions applied to RS or other leases in the field count against that field's applicable suspension volume.

For example, there are five eligible leases in a field and one RS lease. The RS lease has a royalty suspension volume of 10 million barrels of oil. The RS lease begins production first and goes through its royalty suspension volume. When an elgible lease begins to produce, the field has a royalty suspension volume of 87.5 million barrels. Because the RS lease has already taken its 10 million barrels of royalty suspension, the field now has a royalty suspension volume of 77.5 million barrels.

These clarifying amendments make this situation clear, so that there will be no reason to contest the suspension volume on the field.

Procedural Matters

Public Comment Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider any anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, jobs, the environment or other units of government. This action avoids confusion and possible conflict in the rare situation when a deepwater RS lease, that happens to be in a field with deepwater eligible leases, is the first lease to produce in the field. This event should be rare because the eligible leases pre-date the RS lease, meaning the eligible leases were deemed the better prospect and their owners have had more time to explore and develop their potential. Further, the royalty status only of production that occurs probably 10 or more years after start of production on the field would be affected by this rare event because of the large size of the field suspension volumes relative to annual production on typical leases. Finally, any royalty-free production shifted from the eligible leases to the RS lease on the one or two fields where this event may occur would total only about $20 to $30 million, only a portion of which would occur in any one year.

b. This rule will not create inconsistencies with other agencies' actions because there are no changes in requirements from the existing rule.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule will not raise novel legal or policy issues. This action protects the original intent of the DWRRA, should a rare and unlikely situation arise. We propose to handle this situation in a manner that is parallel to our established treatment of the same field when the normal situation of the eligible lease starting producing first occurs.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule will limit automatic royalty relief to deepwater fields to the amount established by the DWRRA, regardless of the water depth and production timing of RS leases on the field. New regulatory provisions will rarely apply and when they do will affect firms, large and small, the same way. Firm size should have no effect on whether RS or eligible leases on the same field start production first.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The proposed rule closes a possible loophole, the use of which may never be attempted. Even if a situation were to arise where this provision applies, the amount of royalties involved is a small fraction of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA)

The proposed revisions do not contain any information collection subject to the PRA and do not require a form OMB 83–I be submitted to OMB for review and approval under section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This proposal may affect the collection of royalty revenues from lessees in the deepwater Gulf of Mexico, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the deepwater royalty relief programs.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidders right to acquire OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. This clarification rule does not have a significant effect on energy supply, distribution, or use because it reduces uncertainty in a rare circumstance relating to the order of drilling of different vintages of leases on a deepwater field having royalty relief. Greater certainty about how a particular sequence of drilling affects both the field's and leases' applicable royalty suspension volumes serves to focus lessee effort towards solving development and production challenges rather than to contesting the ultimate size of an already generous royalty suspension volume awarded to them.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule describes the policies for OCS leases issued with different royalty suspension amounts that happen to be on the same field. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 260

Bidding system, Continental shelf, Oil and gas leasing, Reporting requirements, Restricted joint bidder, Royalty suspension.

Dated: January 30, 2002.

James E. Cason,

Acting Deputy Secretary.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 260 as follows:

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 260.114, paragraph (d) is revised to read as follows:

§ 260.114 How does MMS assign and monitor royalty suspension volumes for eligible leases?

* * * * *

(d) When production (other than test production) first occurs from any of the eligible leases in a field, we will determine what royalty suspension volume applies to the lease(s) in that field. We base the determination for eligible lease(s) on the royalty suspension volumes specified in paragraph (b) of this section and the water depths of eligible leases specified in § 260.117(a).

* * * * *

3. In § 260.124, paragraph (b)(1) is revised to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has an eligible or pre-Act lease?

* * * * *

(b) * * *

(1) Royalty-free production from your RS lease shares from and counts as part of any royalty suspension volume under § 260.114(d) for the field to which we assign your lease; and

* * * * *

[FR Doc. 02–3275 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 191–0315; FRL–7142–6]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Ventura County Air Pollution Control District (VCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 14, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
VCAPCD	74.20	Adhesives and Sealants	01/14/97	03/03/97
SCAQMD	1168	Adhesive and Sealant Applications	09/15/00	03/14/01

On August 12, 1997 and May 25, 2001, Rules 74.20 and 1168 were respectively found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of Rules 74.20 and 1168 into the SIP on July 18, 1996 and August 31, 1999, respectively. The VCAPCD and SCAQMD adopted revisions to the SIP-approved versions of Rules 74.20 and 1168 on January 14, 1997 and September 15, 2000, respectively. The CARB submitted Rules 74.20 and 1168 to us on March 3, 1997 and March 14, 2001, respectively.

C. What Is the Purpose of the Rule Revisions?

Amendments to these rules primarily revise definitions and VOC limits. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD and SCAQMD regulate ozone nonattainment areas (see 40 CFR 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The CARB's ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants,'' December 1998.

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying labeling requirements and rule language. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

Provisions of Rule 74.20 that conflict with section 110 and part D of the Act and prevent full approval of the SIP revision include:

1. The VOC limits in Sections B1–2 for certain adhesives and sealants do not meet RACT.

2. An inappropriate test method is cited in Section E3.

The provision of Rule 1168 that conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision is an exemption for light curable products.

D. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the VCAPCD and SCAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990 ...	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

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

C. Executive Order 13045

Executive Order 13045, entitled 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled 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 proposed 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.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: January 30, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–3347 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214b; FRL–7141–8]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area) includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. In a **Federal Register** notice published June 19, 2000, the Cincinnati-Hamilton area was redesignated to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) effective July 5, 2000. On September 11, 2001, the United States Court of Appeals for the 6th Circuit vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). Therefore, in response to the Court's findings, EPA is proposing to reinstate our redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the effective date of the original redesignation action. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action. In the Final Rules section of this **Federal Register**, EPA is taking this reinstatement action as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the reinstatement is set forth in the direct final rule. If no adverse comments relating to the reinstatement are received in response to this action, no further activity is contemplated. EPA does not intend to reconsider any comments that were, or could have been, presented regarding our original redesignation rulemaking. If EPA receives adverse comments related to the reinstatement, the direct final rulemaking 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 on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before March 14, 2002.

ADDRESSES: All comments should be addressed to: Raymond Gregory, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the Cabinet's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Scientist, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9116, (*gregory.ray@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: January 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–3356 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI15

Endangered and Threatened Wildlife and Plants; Listing Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to

list the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's tryonia (*Tryonia kosteri*), Pecos assiminea (*Assiminea pecos*), and Noel's amphipod (*Gammarus desperatus*) as endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). These species occur at sinkholes, springs, and associated spring runs and wetland habitats. They are found at two sites in Chaves County, NM, one site in Pecos County, TX, and one site in Reeves County, TX. Pecos assiminea is also known from one area in Coahuila, Mexico.

These three snails and one amphipod have an exceedingly limited distribution and are imperiled by local and regional groundwater depletion, surface and groundwater contamination, oil and gas extraction activities within the supporting aquifer and watershed, and direct loss of their habitat (e.g., through burning or removing marsh vegetation, cementing, or filling of habitat). This proposal, if made final, will implement the Federal protection and recovery provisions of the Act for these invertebrate species.

DATES: We will accept comments from all interested parties until April 15, 2002. Public hearing requests must be received by March 29, 2002.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, NM 87113. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office at the above address (telephone 505/346–2525; facsimile 505/346–2542).

SUPPLEMENTARY INFORMATION:

Background

Springsnails

The Permian Basin of the southwestern United States contains one of the largest carbonate (limestone) deposits in the world (New Mexico Department of Game and Fish (NMDGF) 1998). Within the Permian Basin of the Southwestern United States lies the Roswell Basin. Located in southeastern New Mexico, this Basin has a surface area of around 12,000 square miles and generally begins north of Roswell, NM, and runs to the southeast of Carlsbad, NM. The Roswell Basin contains two major aquifers; a deep artesian aquifer, and a shallow surficial aquifer. Water in the springs originates from both the deep aquifer and the shallow aquifer. Here, the action of water on soluble rocks (e.g., limestone and dolomite) has formed abundant ''karst'' features such as sinkholes, caverns, springs, and underground streams (White *et al.* 1995). These hydrogeological formations create unique settings harboring diverse assemblages of flora and fauna. The isolated limestone and gypsum springs, seeps, and wetlands located in and around Roswell, NM, and Pecos and Reeves Counties, TX, provide the last known habitats in the world for several endemic species of mollusks and crustaceans. These species include the Roswell springsnail and Koster's tryonia of the freshwater snail family Hydrobiidae, and Pecos assiminea of the snail family Assimineidae. These snails are distributed in isolated, geographically separate populations, and these species likely evolved from parent species that once enjoyed a wide distribution during wetter, cooler climates of the Pleistocene. Such divergence has been well-documented for aquatic and terrestrial macroinvertebrate groups within arid ecosystems of western North America (e.g., Taylor 1987; Metcalf and Smartt 1997; Bowman 1981; Cole 1985).

North American snails of the family Hydrobiidae inhabit a great diversity of aquatic systems from surface to cave habitats, small springs to large rivers, and high energy riffles to slack water pools (Wu *et al.* 1997). Snails of the family Assimineidae are typically found in coastal brackish waters or along tropical and temperate seacoasts worldwide (Taylor 1987). Inland species of the genus *Assiminea* are known from around the world, and in North America they occur in California (Death Valley National Monument), Utah, New Mexico, Texas (Pecos and Reeves Counties), and Mexico (Bolsón de Cuatro Cíenegas).

The Roswell springsnail, Koster's tryonia, and Pecos assiminea are all aquatic species. These snails have lifespans of 9 to 15 months and reproduce several times during the spring through fall breeding season (Taylor 1987; Pennak 1989; Brown 1991). Snails of the family Hydrobiidae are sexually dimorphic with females being characteristically larger and longer-lived than males. As with other snails in the family, the Roswell springsnail and Koster's tryonia are completely aquatic but can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limit. These two snails occupy spring heads and runs with variable water temperatures (10 to 20 °C) and slow to moderate water velocities over compact substrate ranging from deep organic silts to gypsum sands and gravel and compact substrate (NMDGF 1998). Conversely, the Pecos assiminea seldom occurs immersed in water, but prefers a humid microhabitat created by wet mud or beneath vegetation mats, typically within a few centimeters (cm) of running water.

Gastropods are a class of mollusks with a body divided into a foot and visceral mass and a head which usually bears eyes and tentacles. Like most gastropods, the Roswell springsnail, Koster's tryonia, and Pecos assiminea feed on algae, bacteria, and decaying organic material (NMDGF 1988). They will also incidentally ingest small invertebrates while grazing on algae and detritus (dead or partially decayed plant materials or animals).

These snails are fairly small; Koster's tryonia is the largest of the three snails, and is about 4 to 4.5 millimeters (mm) (0.16 to 0.18 inches (in)) long with a pale tan shell that is narrowly conical with up to 4¼ to 5¾ whorls or twists. The Roswell springsnail is 3 to 3.5 mm (0.12 to 0.14 in) long with a narrowly conical tan shell with up to 5 whorls. Pecos assiminea is the smallest of the three with a shell length of 1.55 to 1.87 mm (0.06 to 0.07 in) and a thin, nearly transparent chestnut-brown shell that is regularly conical with up to 4½ strongly incised (shouldered) whorls and a broad oval opening. Although their shells are similar, the Roswell springsnail is distinguished from Koster's tryonia by a dark, amber operculum (foot disk covering the animal when retracted into the shell) with white spiral streaks, while that of Koster's tryonia is nearly colorless. The genus *Assiminea* can be determined from other snail genera by an almost complete lack of tentacles, leaving the eyes within the tips of short eye stalks (Taylor 1987).

Taylor (1987) first described the Roswell springsnail from a ''seepage'' along the west side of an impoundment in Unit 7 at Bitter Lake National Wildlife Refuge (NWR or Refuge), Chaves County, NM. Since then, Mehlhop (1992, 1993) has documented the species on the Refuge and in March 1995 also found it in a spring on private land east of Roswell (P. Mehlhop, University of New Mexico, pers. comm. 1998). However, the current status of the Roswell springsnail at the spring on private land is unknown since further access has not been granted. Monitoring efforts at Bitter Lake NWR (1995–1998)

led to the discovery of Roswell springsnail populations in Bitter Creek, the Sago Springs Complex, and a drainage canal along the west shoreline of Unit 6. The Roswell springsnail is currently known only from Bitter Lake NWR with the core population in the Sago Springs Complex and Bitter Creek. The Sago Springs complex is approximately 0.3 km long (1,000 linear feet), half of which is subterranean with flow in the upper reaches restricted to sinkholes. Bitter Creek is six times longer than the Sago Springs Complex and has a total length of 1.8 kilometers (1.1 miles). Monthly monitoring and ecological studies of the Roswell springsnail initiated at Bitter Lake NWR in June 1995 (NMDGF 1998) are ongoing.

Roswell springsnail was formerly known from several other springs in the Roswell area, but these habitats have dried up apparently due to groundwater pumping (Cole 1981; Taylor 1983, 1987). Pleistocene fossils of the Roswell springsnail are known from Berrendo Creek and the Pecos River in Chaves County (Taylor 1987). No populations are currently known from these areas.

Taylor (1987) first reported Koster's tryonia from Sago Spring at Bitter Lake NWR, and another population was documented in 1995 at North Spring on private land east of Roswell. The species was formerly found at several other springs in the Roswell area, but these habitats have since dried up due to groundwater pumping (Cole 1981; Taylor 1983, 1987). Pleistocene fossils of Koster's tryonia are known from North Spring River and South Spring Creek in Chaves County (Taylor 1987). Monthly monitoring and ecological studies of Koster's tryonia initiated at Bitter Lake NWR in 1995 by the NMDGF indicate the species is most abundant in the deep organic substrates of Bitter Creek. It also occurs at the Sago Springs Complex, but in lower numbers. The current status of Koster's tryonia at the spring east of Roswell is unknown.

Pecos assiminea is presently known from two sites at Bitter Lake NWR, Chaves County, NM, from a large population at Diamond Y spring and its associated drainage, Pecos County, TX, and at East Sandia Spring, Reeves County, TX. Historically, Pecos assiminea occurred sporadically throughout the Bolsón de Cuatro Cíenegas, Coahuila, Mexico (Taylor 1987), but its present status there is unknown.

Monitoring and ecological studies of Pecos assiminea initiated at Bitter Lake NWR in 1995 showed the snail to be typically absent from substrate samples. Extant populations of Pecos assiminea occur sporadically along Bitter Creek, and a dense population was confirmed on moist vegetation and on muddy surfaces within 1 cm (.39 in) of water in 1999 in an emergent marsh plant community around the perimeter of a sinkhole within the Sago Springs Complex (NMDGF 1999).

Noel's amphipod

Noel's amphipod, in the family Gammaridae, is a small freshwater crustacean. Inland amphipods are sometimes referred to as freshwater shrimp. Noel's amphipod is brown-green in color with elongate, kidney-shaped eyes, and flanked with red bands along the thoracic and abdominal segments, often with a red dorsal stripe. Males are slightly larger than females, and individuals range from 8.5 to 14.8 mm (0.33 to 0.58 in) long (Cole 1981; 1985).

Amphipods of the family Gammaridae commonly inhabit shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Holsinger 1976, Pennak 1989). Because they are light-sensitive, these bottom-dwelling amphipods are active mostly at night and feed on algae, submergent vegetation, and decaying organic matter (Holsinger 1976, Pennak 1989). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991). Most amphipods complete their life cycle in one year and breed from February to October, depending on water temperature (Pennak 1978). Amphipods form breeding pairs that remain attached for 1 to 7 days at or near the substrate while continuing to feed and swim (Bousfield 1989). They can produce from 15 to 50 offspring, forming a ''brood.'' Most amphipods produce one brood but some species produce a series of broods during the breeding season (Pennak 1978).

Noel's amphipod is one of three species of endemic amphipods of the Pecos River Basin occurring from Roswell, NM, south to Fort Stockton, TX, known collectively as the Gammarus-pecos complex (Cole 1985). Noel's amphipod is currently known from only three sites at Bitter Lake NWR. These sites include the Sago Springs Complex, Bitter Creek, and along a drainage canal near impoundment 6 on the Refuge. Noel's amphipod was first described by Cole (1981) from a 1967 collection of amphipods taken from North Spring, east of Roswell. Based on morphological similarities, specimens collected from Lander Springbrook near Roswell were also identified as Noel's amphipod (Cole 1981). The amphipod was extirpated from Lander Springbrook between 1951 and 1960, and the North Spring population was lost between 1978 and 1988. Both incidences of extirpation were attributed to regional ground water depletions and habitat alterations (spring channelization) respectively (Cole 1981, 1988).

Previous Federal Actions

On November 22, 1985, we received a petition from Mr. Harold F. Olson, Director of the NMDGF, to add 11 species of New Mexican mollusks to the Federal list of endangered and threatened wildlife. Roswell springsnail (*Pyrgulopsis roswellensis* formerly *Fontelicella* sp. (Hershler 1994)), Koster's tryonia, and Pecos assiminea were among the 11 species. We determined the petition presented substantial information that the requested action may be warranted and published a positive 90-day petition finding in the **Federal Register** on August 20, 1986 (51 FR 29671). A subsequent 12-month finding published in the **Federal Register** on July 1, 1987 (52 FR 24485) concluded that the petitioned action was warranted but precluded by other higher priority listing actions. This proposed rule constitutes our 12-month recycled petition finding for the Roswell springsnail, Koster's tryonia, and Pecos assiminea. This proposed rule includes a proposal for Noel's amphipod, which has recently been made a candidate for listing since this species shares the same threats and management needs.

We identified the Noel's amphipod as a Category 2 species in our notices of review for animals published in the **Federal Register** on May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Before 1996, a Category 2 species was one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule. We discontinued designation of Category 2 species in the February 28, 1996, notice of review (61 FR 7956).

The springsnails were included as category 1 candidate species in our comprehensive invertebrate Notice of Review published in the **Federal Register** on May 22, 1984 (49 FR 21664). Category 1 candidate species were those for which we had on file substantial information on biological vulnerability and threats to support proposals to designate them as threatened or endangered. On November 21, 1991,

and November 15, 1994 (56 FR 58804, 59 FR 58982) we published revised lists of animals under review for threatened or endangered designation in the **Federal Register**. These notices retained Roswell springsnail, Koster's tryonia, and Pecos assiminea as category 1 candidate species. Subsequently, in the **Federal Register** Notices of Review on February 28, 1996, September 19, 1997, and October 25, 1999 (61 FR 7596, 62 FR 49398, 64 FR 57534), we ceased using category designations and classified these snails as candidate species. Candidate species are those for which we have sufficient information on biological vulnerability and threats to support proposals to designate them as threatened or endangered.

On August 29, 2001, the Service announced a settlement agreement in response to litigation by the Center for Biological Diversity, the Southern Appalachian Biodiversity Project, and the California Native Plant. Terms of the agreement require that we submit to the **Federal Register**, on or by February 6, 2002, a 12-month finding and accompanying proposed listing rule and proposed critical habitat designation for the four invertebrates addressed in this proposed rule. This agreement was entered by the court on October 2, 2001, (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be threatened or endangered due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are as follows.

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

These species are vulnerable to habitat degradation and local extinctions due to local and regional groundwater depletion (Hennighausen 1969, Quarles 1993, Jones and Balleau 1996); direct manipulation of flowing water and habitat conditions, such as damming or piping of water flow, pooling, or diverting flow (Cole 1981, NMDGF 1988); and surface and groundwater contamination from residential, agricultural, and industrial runoff (e.g., herbicides, pesticides) (Eisler 1987, Rail 1989). Like many aquatic invertebrates, the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are important ecological barometers of water quality because they are very sensitive to oxygen levels, water temperature, sediments, and contaminants (Quarles 1983, Eisler 1987, Arritt 1998, NMDGF 1998, 1999). Their presence often indicates a pristine spring or watercourse.

These four species depend upon water for their survival. Therefore, aquifer drawdown and contamination are among the most serious threats to these species. In order to assess the potential for water quality contamination, a study was completed in September 1999 to determine the sources of water for the springs at Bitter Lake NWR. This study (Balleau *et al.* 1999) reported that the source of water that will reach the Refuge springs over time periods ranging from 10 to 500 years includes a broad area beginning west of Roswell near Eightmile Draw, extending to the northeast to Salt Creek, and southeast to the Refuge. This broad area sits within a portion of the Roswell Basin and contains a mosaic of Federal, State, and private lands with multiple land uses including expanding urban development. Some of this development includes the installation of subsurface septic tanks, which can be a source of sewage contamination (McQuillan *et al.* 1989). Since this area delineates the ground water source area of surface water on the Refuge, it likewise represents pathways for contaminants to enter the species' habitat.

Contamination of ground water sources from industry and commercial operations in and around Roswell is well documented. For example, perchloroethylene (PCE) was discovered in the McGaffey and Main ground water plume in Roswell in 1994 (Environmental Protection Agency (EPA) 2001). It is suspected that a dry cleaning facility that operated from 1956 to 1963 is the source of the PCE. The New Mexico Environment Department subsequently detected PCE in 13 of 16 groundwater wells in a 1995 investigation (EPA 2001). This ground plume contamination was proposed for addition to the EPA's National Priority List on September 13, 2001 (66 FR 47612). This list assists the EPA in determining national priority sites that warrant further investigation of the nature and extent of environmental risks associated with the release of hazardous substances. It is not known whether this ground water plume will affect water quality on the Refuge or whether this contamination would impact these invertebrate species. However, portions of the shallow alluvial aquifer underlying Roswell are a source zone for many different contaminants that could eventually reach the Bitter Lakes spring complex (Balleau *et al.* 1999). We do not have specific documentation of adverse impacts associated with chronic or episodic chemical contaminant events to these species. However, such events have been implicated in similar aquatic organisms sharing common characteristics (e.g. Higgins' eye mussel (*Lampsilis higginsii*)) (Service 1999).

Any springsnails remaining at North Spring, which is surrounded by a golf course, are threatened by pesticide or herbicide use for landscaping or maintenance and springhead alteration, which includes piping, damming, or pooling spring outflow (NMDGF 1999). Populations of Roswell springsnail and Koster's tryonia at North Spring are reduced due to springhead modification (Landye 1981), regional groundwater depletion (Taylor 1987, NMDGF 1988), and recent observed reductions in springhead flow (Arritt 1998). The area of the historic Lander Springbrook (the first record of what was later identified as Noel's amphipod was discovered at Lander Springbrook) is believed to have existed near South Spring acres, where this historic spring joined the South Spring River. This area was visited in 1995 and found to be dry (William Radke, pers. comm. 2000). Given that the amphipod cannot survive outside of an aquatic environment, this population has likely been extirpated.

Oil drilling occurs throughout the Roswell Basin. This activity and associated actions can threaten the water quality of the aquifer on which these species depend. For example, oil and other contaminants from drilling activities throughout the basin could enter the aquifer supplying the springs inhabited by all four species when the limestone layers are pierced by drilling activities. There are at least 190 oil wells in the area surrounding Bitter Lake NWR that are potential sources of contamination. The total number of wells that could potentially contaminate the underground water supply that is the source of water on the Refuge has not been quantified. According to Go-Tech, which is a database of oil and gas development and exploration actions in New Mexico, currently 23 ''intentions to drill'' (pursuit of required permits has been initiated by an applicant) are under way for oil or natural gas on Federal lands in Chavez County, 16 on State lands and 7 on private land (Go-Tech 2001). The Bureau of Land Management (BLM) continually receives requests for oil and gas development on public lands immediately adjacent to the Refuge. In March 2000 there were at

least 36 oil wells in the immediate vicinity of the Refuge (New Mexico Bureau of Mines and Minerals 2000). To remediate (clean) the aquifer would be extremely difficult should it become contaminated by oil, chemicals, or organics like nitrates. In most cases contamination of an underground aquifer by agricultural, industrial, or domestic sources is treated at the source. When a contamination site is discovered, techniques are used to address the source of the contamination. Rarely do remediation efforts pump water from the aquifer and treat it before sending it back. This is largely because these techniques are very costly and difficult to apply (Sarah McGrath, New Mexico State Ground Water Bureau, pers. comm. 2001). Because these invertebrate species are sensitive to contaminants, efforts to clean up pollution source sites after the aquifer has been contaminated may not be sufficient to protect the aquatic habitat on which these species depend.

Operations associated with oil and gas drilling such as exploration, storage, transfer, and refining are also potential threats to these species (Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Green and Trett 1989; Service 1997). Such extractive processes and industry operations are known to deplete groundwater aquifers and to contaminate ground and surface waters (Hennighausen 1969; Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Richard 1988a, 1988b; Rail 1989; Richard and Boehm 1989a, 1989b; Jones and Balleau 1996; Martinez *et al.* 1998). This groundwater depletion and ground and surface water contamination can adversely impact aquatic mollusks (Eisler 1987, Havlik and Marking 1987, Green and Trett 1989), and threaten Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod populations at Bitter Lake NWR (USFWS 1997).

Oil and gas development along with the depletion of groundwater in the Pecos River valley also poses a threat to the population of Pecos assiminea at the Diamond Y Springs Complex. According to Veni (1991), over-pumping of the Pecos aquifer has dried other springs in the region, and the flow at Diamond Y spring is potentially threatened by groundwater withdrawal and contamination from agricultural and oil and gas industries within its drainage area. Reductions in endangered spring snail populations in other parts of the country due to reductions in water quality resulting from contamination by agricultural pesticides and herbicides are well documented (Frest and Johannes 1992, Mladenka 1992). There is evidence that colonies of Utah valvata (*Valvata utahensis*) and Bliss Rapids snail (*Taylorconcha serpenticola*) have recently declined or have been eliminated at several sites from changes in water quality due to agricultural and aquaculture wastewater originating outside the area (Frest and Johannes 1992). These two species are similar to the three snail species addressed in this proposal for listing, and as a result the three snail species could also be expected to experience adverse effects in response to environmental contaminants. Waste water from concentrated animal areas (i.e. dairies, feed lots, chicken farms), septic tanks, and agricultural uses is a known contributor of nitrates to surface and underground water sources. Nitrate levels in the underground aquifer near Roswell are known to be high. A significant source of the nitrates comes from surrounding dairy farms (Sarah McGrath, New Mexico State Ground Water bureau, pers. comm. 2001). The effects of nitrates on aquatic species are not entirely known because several outcomes may result from high level nitrate contamination in aquatic systems. One outcome includes increased growth of algae resulting from increased nutrients in the aquatic system. Too much algae in an aquatic environment could result in periods of low oxygen (resulting from increased respiration by algae) and in extreme cases this could be lethal to the snails and the amphipod. Also the type and amount of algae could change from more benign species to species which release phytotoxins into the environment and are lethal to some aquatic species. Elevated nutrient conditions favor blue-green algae which is a phytotoxin emitter. Should ammonia be a part of the pollution coming from industrial sites, agricultural areas, or domestic sources (i.e. septic tanks) this is a known acute toxin to aquatic life (Joel Lusk, USFWS, pers. comm., 2001). At least two dairy farms are currently required to do remediation for their contribution of nitrates to water pollution, both surface and underground (Sarah McGrath, New Mexico State Ground Water bureau, pers. comm. 2001). In addition, Diamond Y spring provides essential wetland habitat for several other rare and/or declining species such as the federally endangered Leon Springs pupfish (*Cyprinodon bovinus*) and federally threatened Pecos sunflower (*Helianthus paradoxus*).

East and West Sandia Springs are at the base of the Davis Mountains just east of Balmorhea, TX, and are part of the Balmorhea Spring Complex, the largest remaining desert spring system in Texas where the Pecos assiminea is found. West Sandia Spring has ceased flowing in recent times (Chris Perez, USFWS, pers. comm). East Sandia Spring discharges at an elevation of 977 meters (m) (3,224 feet (ft)) from alluvial sand and gravel, but the water is likely derived from Comanchean limestone underlying the alluvium (clay, silt, sand, and other similar material deposited by running water) (Brune 1981). Brune (1981) noted that flows from Sandia Springs were declining. According to Schuster (1997), the combined discharge of the Toyah basin springs from 1990 to 1996, which includes East Sandia Spring, shows an overall declining trend. The small flow from these springs is used by the local farming community for agricultural irrigation (Schuster 1997).

Finally, the range reduction trend in these snail species (e.g., by extirpation of once widely distributed but localized populations) is supported by the Pleistocene fossil record in conjunction with re-inventory of known site occurrences in which no individuals were detected (Noel 1954; Taylor 1987; Mehlhop 1992, 1993; NMDGF 1999). Fossil records indicate that at least one or more of these snail species were historically found at Berrendo Creek, North Spring, and South Spring Rivers and along the Pecos River (NMDGF 1999). This evidence suggests an apparent historical decline in the numbers, range, and distribution of these species.

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

We are unaware of threats to these four species from this factor. Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod may occasionally be collected as specimens for scientific study, but these uses probably have a negligible effect on total population numbers. All of these species are currently not known to be of commercial value, and overutilization has not been documented. However, as their rarity becomes known, they may become more attractive to collectors. Although scientific collecting is not presently identified as a threat, unregulated collecting by private and institutional collectors could pose a threat to these locally restricted populations. We are aware of overcollection being a potential threat with other snails (e.g., armored snail (*Pyrgulopsis* (*Marstonia*) *pachyta*)(65 FR 10033); Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) (58 FR

5938); and Socorro springsnail (Pyrgulopsis *neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) (56 FR 49646)), due to their rarity, restricted distribution, and generally well known locations. Due to the small number of localities for the snails and the amphipod, these species are vulnerable to unrestricted collection, vandalism, or other disturbance. There is no documentation of collection as a significant threat to any of the species. Therefore, we believe that collection of the animals is a minor but present threat.

C. Disease or Predation

Springsnails as well as amphipods provide a food source for other aquatic animals. Juvenile springsnails appear vulnerable to a variety of predators. Damselflies (Zygoptera) and dragonflies (Anisoptera) were observed feeding upon snails in the wild (Mladenka 1992). Mladenka (1992) observed guppies feeding upon snails in the laboratory. Disease is not a documented threat at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms are inadequate to protect the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. All four species are listed as New Mexico State endangered species, Group 1, which are those species ''* * * whose prospects of survival or recruitment within the State are in jeopardy.'' This designation provides the protection of the New Mexico Wildlife Conservation Act and prohibits the take of these species, except under issuance of a scientific collecting permit. However, New Mexico State statutes do not address habitat protection, indirect effects, or other threats to these species. State status as an endangered species conveys protection from collection or intentional harm. However, there is no formal consultation process to address the habitat requirements of the species or how a proposed action may affect the needs of the species. In Texas, Pecos assiminea currently has no State or other regulatory protection.

Members of these species that co-exist in springs with the endangered Pecos gambusia (*Gambusia nobilis*) at Bitter Lake NWR and Diamond Y Spring and the endangered Leon Springs pupfish at Diamond Y Spring may receive incidental habitat protection from the Endangered Species Act. However, possible habitat protection provided by the federally listed Pecos gambusia and the Leon Springs pupfish offers only partial protection for the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod because these federally listed fish are not found in all the springs the snails or amphipod inhabit. For example, Pecos assiminea does not normally occur directly within submerged habitats. It is most commonly found in moist soil or vegetation along the periphery of standing water. As a result, this habitat may not be afforded protection under current management actions or consultations which address conservation for listed fish species in the same area.

Federal water-rights for the Bitter Lake NWR were secured in 1996 (USDJ 1996). This acquisition should ensure minimum surface water discharge of Bitter Creek. However, if this water is contaminated, the Federal water right does not provide the required protection for these species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Since these species inhabit only a few sites, there is a high probability that human-caused or natural events could destroy a significant portion of their remaining populations and habitat. Prolonged drought, for instance, could adversely impact populations by reducing groundwater recharge while increasing salinity and contaminant concentrations (NMDGF 1998).

Fire, particularly during the winter months, will allow ash, sediment, salts and nutrients to more readily enter the aquatic habitat via precipitation and wind. Ash consists of carbon, soots, and other organic compounds that, upon entering the water column, provide a food source for bacteria and algae. With the addition of associated nutrients, and water temperature increases from the loss of streamside vegetation, populations of bacteria and algae will expand causing oxygen depletions. As a result, some invertebrates may perish in these situations, where they cannot escape the oxygen deficit. Additionally, denuded areas will allow erosion and sedimentation of the streamside habitat. Sedimentation could have the direct effect of smothering the invertebrates.

The Refuge is characterized by sinkhole/karst terrain. This terrain poses safety threats to fire crews and suppression equipment. As a result, fire suppression efforts are largely restricted to established roads. This severely limits management ability to quickly suppress fires that threaten fragile aquatic habitats on the refuge. On March 5, 2000, the Sandhill fire burned 405 hectares (ha) (1,000 acres (ac)) of the western portion of the refuge, including portions of Bitter Creek. Post-fire surveys indicated significant decreases in the invertebrate populations in Bitter Creek as well as decreases in dissolved oxygen levels (Brian Lang, NMDGF, pers. comm. 2000)

The Pecos assiminea may be threatened by competition for resources from the tropical red-rimmed melania snail (*Melanoides tuberculata*). This exotic snail is abundant at Diamond Y Spring and outcompetes native aquatic snails (Lisa Kiner, pers. comm. 1999).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining these species are vulnerable to extinction throughout all or a significant portion of their ranges. The habitat and range of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are threatened with destruction, modification, and curtailment. Existing regulatory mechanisms do not provide adequate protection for these species, and other natural and manmade factors affect their continued existence. Because each of these four species has a very limited range, their populations are disjunct and isolated from each other, and potential habitat areas are isolated and separated by large areas of unsuitable habitat, these invertebrates are particularly vulnerable to localized extinction should their habitat be degraded or destroyed. Because their mobility is limited, populations will have little opportunity to leave degraded habitat areas in search of suitable habitat. As a result, one contamination event, or a short period of drawdown in the aquatic habitat where they are found could result in the loss of entire population areas, of which there are few. Therefore, we propose to list the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod as endangered. A threatened designation would not accurately reflect the population status, restricted distribution, vulnerability, and imminent threats.

General Critical Habitat Principles

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the

conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act, with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferencing on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under the section 7 adverse modification standard, designation of critical habitat does not provide prohibitions beyond those available from the listing of a species as endangered or threatened.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas. Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits. Critical habitat identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR part 424.12) state that critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. When we designate critical habitat at the time of listing we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat. Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We can exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction 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)).

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's 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. Information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature). Our final determination will be based on the best available scientific information and will take into consideration comments that we receive from peer reviewers and the public.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the geographical area designated is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Additionally, as described in the ''Available Conservation Measures'' section below, activities occurring within the larger supporting aquifer systems may also adversely modify the proposed critical habitat for these four invertebrate species. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy and adverse modification 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.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Prudency Determination

As mentioned above, section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation

of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the last few years, a series of court decisions have overturned our determinations that designation of critical habitat would not be prudent for a variety of species (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have examined the question of whether critical habitat for these four invertebrate species would be prudent.

Due to the small number of localities for the snails and the amphipod, these species are vulnerable to unrestricted collection, vandalism, or other disturbance. However, there is no documentation of collection as a significant threat to any of the species. Additionally, much of the habitat where the springsnails and amphipod occur is managed for the benefit of wildlife species where the threat of collection should be reduced. Consistent with recent case law, we must weigh the benefits in proposing to designate critical habitat for the snails and the amphipod against the harm which could be caused by disclosure of their location. We find that these benefits outweigh the risk of increased collection because the locations are already known and available to the public.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies consult with us to ensure that their proposed actions will not destroy or adversely modify critical habitat. While a critical habitat designation for these species in currently occupied habitat would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also have some educational or informational benefits. Therefore, we find that critical habitat is prudent for the three snails and the amphipod.

Although we make a detailed determination of the habitat needs of a listed species during the recovery planning process, the Act has no provision to delay designation of critical habitat until such time as a recovery plan is prepared. We reviewed the available information pertaining to habitat characteristics where these species had been recently located. This and other information represent the best scientific and commercial data available, and led us to conclude that the designation of critical habitat is both prudent and determinable for these four invertebrate species. Therefore, we propose to designate critical habitat pursuant to the Act for the springsnails and the amphipod.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we must consider those physical and biological features (primary constituent elements) essential to the conservation of the species. These primary constituent elements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species. The areas we are proposing to designate as critical habitat for the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod provide one or more of the primary constituent elements noted below.

We determined the specific primary constituent elements for Roswell springsnail, Koster's tryonia, and Noel's amphipod from data and studies on their general habitat and life history requirements including, but not limited to, Noel 1954; Cole 1981; Taylor 1987; Pennak 1978, 1989; and NMDGF 1996, 1998, and 1999. These primary constituent elements include permanent, flowing, unpolluted fresh to moderately saline water; slow to moderate velocities of water over substrates (a surface on which a plant or animal grows or is attached) ranging from deep organic silts to limestone cobble and gypsum substrates; presence of algae, submergent vegetation, and detritus in the substrata; water temperatures in the approximate range of 10 to 20 °C (50 to 68 °F) with natural diurnal and seasonal variation slightly above and below that range.

These three species are completely aquatic and require perennial, flowing water for all of their life stages. The aquatic environment provides foraging and sheltering habitat, as well as habitat structure necessary for reproduction and successful recruitment of offspring. Water is also the medium necessary to provide the algae, detritus, bacteria, and submergent vegetation on which all four species depend as a food resource. The necessary substrates, silts, cobbles, or gypsum, also provide habitat within the aquatic environment for these species to shelter, reproduce, and forage. Submergent vegetation contributes to the necessary nutrients, detritus, and bacteria on which these species forage. This vegetation also provides sheltering habitat.

We determined the primary constituent elements for Pecos assiminea from data and studies on its general habitat and life history requirements including, but not limited to, Taylor 1987; Pennak 1978, 1989; and NMDGF 1996, 1998, and 1999. These primary constituent elements include those noted above for the Roswell springsnail, Koster's tryonia, and Noel's amphipod and, in addition, moist soil at stream or spring run margins with vegetation growing in or adapted to an aquatic or very wet environment, such as salt grass or sedges. The margins of riparian systems that already contain the above necessary elements were included in this proposed designation because Pecos assiminea is found within the mesic (moist) environment directly adjacent to the aquatic habitat. Substrates found in these marginal areas provide for temperatures within the environmental tolerance for this species, and the habitat for sheltering, foraging, and reproduction that the Pecos assiminea requires.

Proposed Critical Habitat Designation

In proposing critical habitat for these species, we solicited information from knowledgeable biologists and recommendations contained in State wildlife resource reports (Balleau et al. 1999, NMDGF 1999, NMDGF 1998, Boghici 1997, Jones and Balleau 1996, and Cole 1985). We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for these species. The proposed critical habitat described below constitutes our best assessment of areas needed for the conservation of the three springsnails and Noel's amphipod and is based on the best available scientific and commercial information available. The proposed areas are essential to the conservation of the species because they are within the

geographical area occupied by these macroinvertebrate populations and because they currently have one or more constituent elements (see description of primary constituent elements, above).

Although these species are unique to only a few sites, important considerations in selection of areas proposed in this rule include factors specific to each geographic area or complex of areas, such as size, connectivity, and habitat diversity, as well as range-wide recovery considerations, such as genetic diversity and representation of all major portions of the species' historical ranges. The proposed critical habitat designation includes all known populations of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. Uncertainty of occurrence at other sites may result in small areas of occupied habitat not being included in the designation.

We are not including North Spring, Chaves County, NM, as critical habitat because it has been significantly modified by private land uses, it is surrounded by a golf course, and it is unlikely that these species still exist at this site. This site is also isolated from the springsnail populations in Bitter Creek and the Sago Springs Complex, which comprise the core populations of these species. Due to habitat modifications at North Spring, we do not know if the area provides for the essential life cycle needs of these species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)) and, therefore, we are not proposing to include it in the designation. We intend to work with land managers at North Spring to address important conservation needs of any remaining springsnails there.

We propose the following areas as critical habitat for these invertebrate species (see the ''Regulation Promulgation'' section of this proposed rule for exact boundary descriptions). These proposed critical habitat areas include primary constituent elements that provide for the physiological, behavioral, and ecological requirements essential for the conservation of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. The proposed designation includes two areas or ''complexes'' on Bitter Lake NWR, one complex at Diamond Y Spring, associated springs, and a segment of their drainages, and East Sandia Spring. A broad array of sinkholes and spring complexes provide a diversity of habitat types. We are proposing to include these areas in the critical habitat designation to maintain ecological distribution as well as adequate pathways necessary for genetic exchange, thereby fostering genetic diversity and population viability.

1. Sago/Bitter Creek Complex, Bitter Lake NWR, Chaves County, NM. Sago Springs, Bitter Creek, and the adjacent gypsum sinkholes comprise the core population center for all four species. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek and the Sago Springs complex. This designation is approximately 211 ha (521 ac).

2. Impoundment Complex, Bitter Lake NWR, Chaves County, NM. This complex includes portions of impoundments 3, 5, 6, 7, 15, and Hunter Marsh. This is a secondary population center for all four invertebrates with Koster's tryonia being the principal species there. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding the Refuge impoundments. This designation is approximately 245 ha (606 ac).

3. Diamond Y Springs Complex, Pecos County, TX. This area comprises a major population of Pecos assiminea. The proposed designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow, and portion of Leon Creek are also proposed for designation as these areas are considered habitat for the Pecos assiminea. This designation is approximately 153.8 ha (380 ac) of aquatic and neighboring mesic habitat.

4. East Sandia Spring, Reeves County, TX. This spring contains a population of Pecos assiminea. The proposed designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea. This designation is approximately 6.7 ha (16.5 ac) of aquatic and neighboring upland habitat.

Land Ownership

Most of the land included in the designation is within the administrative boundaries of the Bitter Lake NWR. However, within the designation are also private lands associated with the Diamond Y Spring Complex and East Sandia Spring. Both of these springs support populations of the Pecos assiminea. Diamond Y Spring is located in Pecos County, TX, and East Sandia Spring is located in Reeves County, TX. These private lands are managed as a nature preserve by The Nature Conservancy. Surrounding land uses include ranching and irrigated farming.

A general description of land ownership in each area follows.

1. Sago/Bitter Creek Complex-This complex occurs entirely on Bitter Lake NWR (Federal ownership).

2. Impoundment Complex-This complex occurs entirely on Bitter Lake NWR (Federal ownership).

3. Diamond Y Springs Complex-This complex occurs entirely on private lands. Private land in the immediate vicinity of the Diamond Y Springs Complex is managed as a nature preserve by The Nature Conservancy.

4. East Sandia Spring. The site is private land managed as a nature preserve by The Nature Conservancy.

The approximate Federal and private ownership within the boundaries of the critical habitat is shown in Table 1.

TABLE 1.—APPROXIMATE CRITICAL HABITAT BY LAND OWNERSHIP AND STATE IN HECTARES (ACRES)

	New Mexico	Texas	Total
Federal Land (National Wildlife Refuge).	456 ha (1,127 ac)	None	456 ha (1,127 ac).
Private Land	None	160.5 ha (396.5ac)	160.5 ha (396.5 ac).
Total			616.5 ha (1,523.5 ac).
Total critical habitat units			4.

Special Management Considerations and Protection

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. We use the following three criteria to determine if a plan provides adequate special management or protection: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, i.e., provide for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would no longer meet the definition of critical habitat.

Two proposed critical habitat sites are currently being managed by The Nature Conservancy (TNC). The Nature Conservancy currently has no formal management plans for these areas, but intends to have draft plans developed. If these plans are finalized prior to our final determination, we will consider whether they provide special management and we may exclude these areas if we determine that no additional special management is required.

Effect of Critical Habitat Designation

The designation of critical habitat directly affects Federal agencies. The Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat.

If a species is subsequently listed or critical habitat is designated, then 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 destroy or adversely modify its critical habitat. To that end, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated.

Section 4(b)(8) of the Act requires us to include in any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the springsnails and amphipod is appreciably reduced.

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 (see the next section, ''Available Conservation Measures,'' for a discussion of specific actions that may affect listed species or critical habitat). It is important to note that proposed critical habitat may also be adversely modified by certain activities occurring within the larger supporting aquifer systems. This would particularly include adverse impacts to the Roswell Basin aquifer for Bitter Lake NWR and Rustler aquifer (Boghici 1997) for Diamond Y Springs Complex. 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 for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat for these springsnails and the amphipod would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by these species. In those cases, critical habitat provides little additional protection to a species, and the existence of a critical habitat designation does not materially affect the outcome of consultation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed in part in the ''Effect of Critical Habitat Designation'' section below.

Federally supported actions that could affect the springsnails, amphipod, or their habitats include any activity that would significantly alter the source-water capture zones, subterreanean flows, or water level of the supporting aquifers; any activity that would significantly alter the water chemistry and physical parameters (e.g., temperature) in the wetland habitats and systems where these species occur;

and any activity that would introduce, spread, or augment non-native aquatic predators or competitors. This may generally involve groundwater pumping, water diversion, drainage alteration projects, wetland filling, road construction, construction of public and private facilities, chemical applications, oil and gas permitting activities, technical assistance programs, and wastewater or point-source discharge permits. Specific examples include, but are not limited to, EPA authorization of discharges under the National Pollutant Discharge Elimination System and registration of pesticides; Federal Highway Administration approval or funding of road or highway infrastructure and maintenance; BLM issuance of oil and gas leases or permits; U.S. Army Corps of Engineers authorization of discharges of dredged or fill material into waters of the United States under section 404 of the Clean Water Act; USDA-Natural Resources Conservation Service technical assistance and other programs; USDA-Rural Utilities Service infrastructure or development; Federal Energy Regulatory Commission permitting activities; and the Department of Housing and Urban Development's Small Cities Community Development Block Grant and home loan programs.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the U.S. Fish and Wildlife Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of this proposed listing on future and ongoing activities within the species' range. We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the publication in the **Federal Register** of the final regulation adding these species to the list of endangered species;

(2) Oil and gas exploration and drilling in areas where surface or groundwater is not connected to habitats occupied by the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod;

(3) Groundwater pumping or use of a supporting aquifer that would not result in a significant lowering of aquifer levels or reduced spring water discharges; and

(4) Domestic sewer hook-ups to city wastewater treatment systems within the groundwater recharge zones of the supporting aquifers.

Potential activities involving these species that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of these species for private possession or deposition in an institutional collection without the appropriate Federal permits;

(2) The use of chemical insecticides or herbicides in violation of the label directions which results in killing or injuring these species;

(3) The unauthorized release of biological control agents (e.g., insects) that attack any life stage of these species;

(4) Subsurface drilling or similar activities that contaminate or cause significant degradation of surface drainage water or aquifer water quality that supports the habitat occupied by these species;

(5) Groundwater pumping to the extent that a significant reduction in the quantity or quality of water in areas occupied by these species occurs;

(6) Septic tank placement where the groundwater is connected to sinkhole or other aquatic habitats occupied by these species;

(7) Activities occurring within the surface drainage zones that produce contaminated run-off (e.g., dumping waste products such as chemicals or oils on upland sites) during significant rain events; and

(8) Habitat modification such as removal of marsh emergent or perennial vegetation, construction, clearing, grading, digging, filling, blasting, and alteration of the natural drainages within or adjacent to the occupied wetland feature that results in killing or injuring these species by significantly impairing essential life-sustaining requirements such as breeding, feeding, and shelter.

If you have questions regarding whether specific activities will likely violate section 9, contact the New Mexico Ecological Services Field Office (see **ADDRESSES** section). For Pecos assiminea in Texas, contact the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, TX 78758, (512/490–0057). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103 (telephone 505/248–6920; facsimile 505/248–6788).

Economic Analysis

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 consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this proposal on the best available scientific information. We will use the economic analysis, and take into consideration all comments and information submitted during the comment period, to make a final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying an area as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in extinction of the species. We will conduct a robust economic analysis on the effects of the proposed critical habitat designation prior to a final determination that will comply with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et.al.* v. *U.S. Fish and Wildlife Service.* When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period at that time to accept comments on the economic analysis or further comment on the proposed rule.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to, ''clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.'' If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial Order also requires us to consult with tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. However, no known tribal activities could cause either direct or incidental take of the four species in this proposed rule, and no tribal lands or tribal trust resources are anticipated to be affected by the proposed designation of critical habitat.

Public Comments Solicited

The Service expects any final rule resulting from this proposal to be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) Additional information concerning the range, distribution, and population size of these species, including the locations of any additional populations of these species;

(3) Current or planned activities in the subject area and their possible impacts on these species;

(4) Reasons why any habitat should or should not be determined to be critical habitat for these species pursuant to section 4 of the Act; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register**, we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and our conclusions relating to the taxonomic, biological, and ecological information for the three snails and the amphipod. The purpose of such a review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the information presented in this proposed rule to list and designate critical habitat for the three springsnails and amphipod.

In making a final decision on this proposed rule, we will take into consideration the comments and any additional information we receive. The final rule may differ as a result of this process.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to New Mexico Ecological Services Field Office (see **DATES** and **ADDRESSES** sections).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the proposed designation of critical habitat in this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB). Under section 4(b)(1)(A) of the Act, the Secretary is to make listing proposals solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account any efforts being made to protect the species. Therefore, our analyses under E.O. 12866 and the Regulatory Flexibility Act pertain only to the proposed critical habitat portion of this rule, and not to the proposed listing. Under section 4(b)(2) of the Act, the Secretary is to designate critical habitat based on the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we believe that the proposed critical habitat designation will not have an annual economic effect of $100 million or more or 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.

(b) This proposed designation of critical habitat, if finalized, will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of listed species. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that will exist from a proposed or final listing of these four invertebrate species. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) We believe that this proposed designation of critical habitat, if finalized, 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, but will wait until completion of the economic analysis to fully evaluate expected effects.

(d) OMB has determined that the proposed designation of critical habitat for these species may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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 effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's proposed rule, we are certifying that the proposed designation of critical habitat will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The Small Business Administration (http://www.sba.gov/size) defines small entities to 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. 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. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if a rule designating critical habitat would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; private or State activities are not affected by the designation unless they have a Federal nexus. If the listing of these species is finalized, Federal agencies will be required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect Roswell springsnail, Koster's tryonia, Noel's amphipod or Pecos assiminea. If this proposed critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of these species that are proposed for listing, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Because these species have not been listed, there is no history of consultations. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the listing and critical habitat designation. The areas where critical habitat designations are being proposed are largely being managed for the benefit of wildlife. Projected land uses for the majority of the proposed critical habitat consists of habitat improvement projects (i.e., exotic weed control and prescribed burning), wildlife management, and recreational use (i.e., hunting, bird watching, and hiking).

On non-federal lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are most likely to occur on non-federal lands in the area encompassed by this proposed designation are recreation-related activities (i.e., hiking, trail construction, hunting, bird watching, and fishing). Oil and gas development and agricultural uses are also potential activities which could occur on private lands proposed as critical habitat in this designation. However, we do not expect the economic development of these lands through oil and gas or agricultural uses to be likely because these lands are currently owned by The Nature Conservancy and are managed as nature preserves to benefit wildlife and plant species. Land use outside of the proposed critical habitat designation that surrounds the Diamond Y Springs Complex is predominantly ranching and irrigated farming. We also do not expect the economic development of these

lands through agricultural uses to be likely because existing water rights are already established in this area and the use of chemical insecticides or herbicides carried out in accordance with the label directions would not result in a significant economic effect.

This proposed designation of critical habitat would not affect a substantial number of small entities currently involved in oil production. Prohibitions on oil and gas development or exploration are not anticipated. Conservation measures or stipulations to future permits and leases may be necessary to prevent contamination of water resources; however, these measures and stipulations should not result in significant economic hardship to a substantial number of small entities. We are not aware of a significant number of future activities that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities involved in oil production.

We also considered the likelihood that this proposed designation of critical habitat would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for small entities who are usually applicants for Federal permits. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for these springsnails and amphipod, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face. The kinds of actions that may be included in future reasonable and prudent alternatives include monitoring of water contamination and measures to prevent contamination, such as stipulations on permits to drill for natural gas or oil, control of exotic weeds in spring areas, and suspended or restricted use of pesticides or herbicides in areas occupied by and necessary to the survival and recovery of these species. Because recommended reasonable and prudent alternative measures must be economically feasible, these measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Many of the parcels within this designation are located in areas where likely future land uses would not be affected by designation of critical habitat. As discussed earlier, the private parcels within the proposed designation are currently being managed for the benefit of wildlife and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact due to the proposed designation of critical habitat—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for habitat improvement projects (i.e., invasive species control or prescribed burning), oil and gas development or exploration permitting, and activities which may result in the depletion of underground water sources or contamination of the underground aquifer. The proposed designation of critical habitat would result in project modifications only when proposed Federal activities, or non-Federal activities with a Federal nexus, would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the Roswell springsnail, Koster's tryonia, Noel's amphipod and Pecos assiminea will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed designation of critical habitat is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Prohibitions to carry out energy development or exploration are not anticipated as a result of this action either within the proposed designation or within the larger supporting aquifer systems. Based on our experience with section 7 consultations for all listed species, virtually all projects—including

those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for these springsnails and amphipod, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face. The kinds of actions that may be included in future reasonable and prudent alternatives for energy development include monitoring of water contamination and measures to prevent contamination. Stipulations on permits to drill for natural gas or oil and mineral leases may be necessary, in some circumstances, to protect aquatic habitat from contamination or degradation. However, these measures and stipulations should not result in significant negative impacts to energy supplies, distribution or use. Energy development within the proposed critical habitat designation is very unlikely given current land ownership. Future development and exploration beyond that which currently exists on the Refuge are also unlikely as no additional mineral leases are available that have not already been developed and/or abandoned. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) 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 these 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 the proposed listing and designation of critical habitat for these 4 species. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. A copy of this assessment is available by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposal with appropriate resource agencies in New Mexico and Texas (i.e., during the prior 90-day finding comment period and on an annual basis with the New Mexico Department of Game and Fish). We will continue to coordinate any future listing decisions or designation of critical habitat for the three springsnails and the amphipod with the appropriate Federal, State, and local agencies. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack Federal involvement. In areas occupied by the Roswell springsnail, Koster's tryonia, Noel's amphipod, and Pecos assiminea, Federal agencies funding, permitting, or implementing activities will be required, if these species are listed, through consultation with us under section 7 of the Act, to avoid jeopardizing their continued existence. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are specifically identified. While our making this definition and identification does not alter where and what federally sponsored activities may occur, these determinations 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 this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to list these four species and 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 the springsnails and the amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the springsnails,

pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

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), E.O. 13175, and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the four invertebrates. Therefore, we are not proposing to designate critical habitat for these species on Tribal lands. Additionally, the proposed designation does not contain any lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section) (telephone 505/346–2525).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) as follows:

a. Add Koster's tryonia snail, Pecos assiminea snail, and Roswell springsnail in alphabetical order under ''SNAILS''; and

b. Add Noel's amphipod under ''CRUSTACEANS'', to 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						
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Snail, Koster's tryonia	*Tryonia kosteri*	U.S.A. (NM)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
Snail, Pecos assiminea.	*Assiminea pecos*	U.S.A. (NM, TX), Mexico.	NA		E	17.95(f)	NA
*	*	*	*	*	*		*
Springsnail, Roswell	*Pyrgulopsis* (=*Fontelicella*) *roswellensis*.	U.S.A. (NM)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Amphipod, Noel's	*Gammarus desperatus*	U.S.A. (NM)	NA	E		17.95(h)	NA
*	*	*	*	*	*		*

3. Amend § 17.95 as follows:

a. In paragraph (f), add critical habitat for Koster's tryonia, Pecos assiminea, and Roswell springsnail; and

b. In paragraph (h), add critical habitat for Noel's amphipod, in the same alphabetical order as these species occur in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

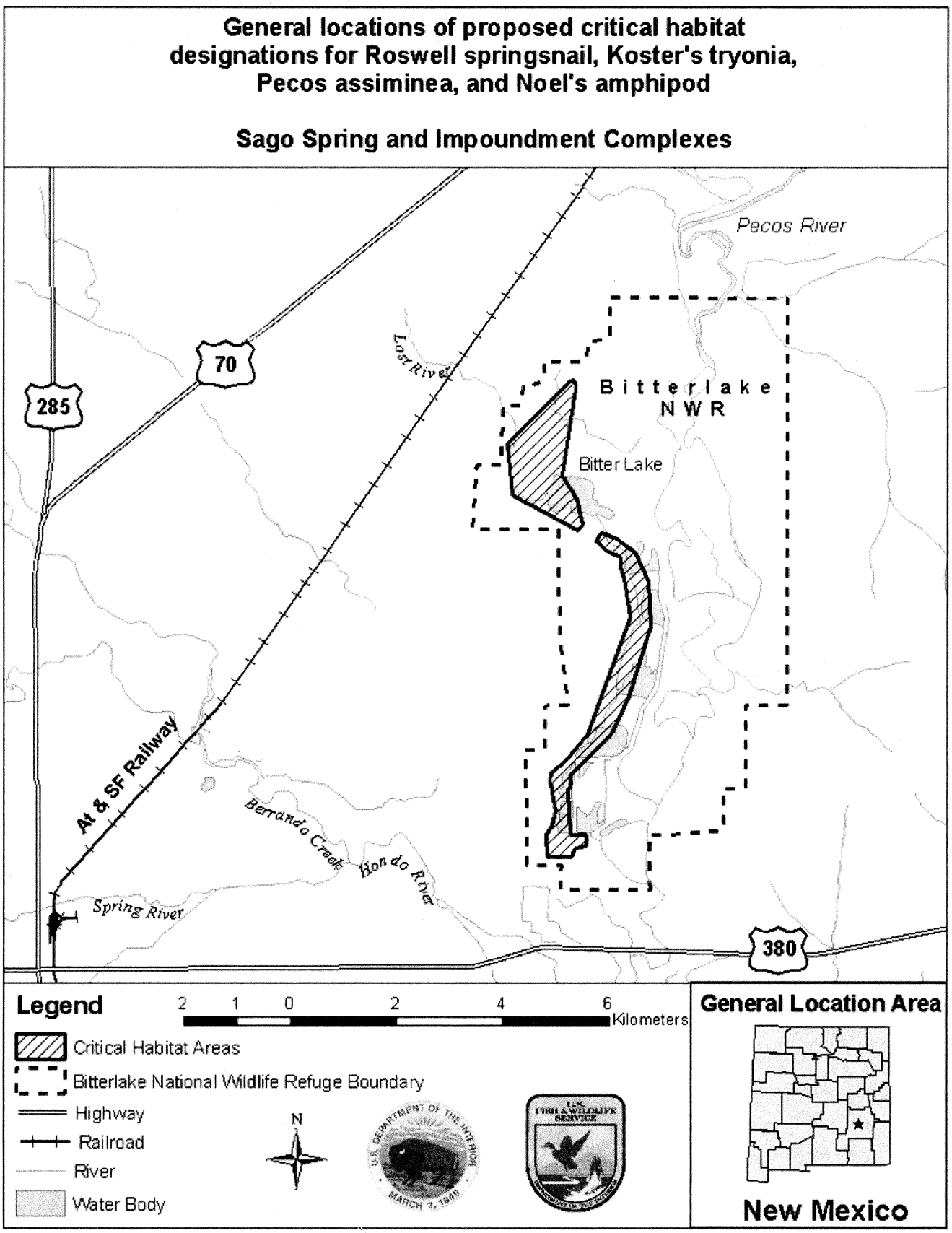
(f) *Clams and snails.*

* * * * *

Koster's tryonia (*Tryonia kosteri*)

1. Critical habitat is depicted for the Koster's tryonia in Chaves County, NM, at the Bitter Lake National Wildlife Refuge and Sago Springs, Bitter Creek, the adjacent gypsum sinkholes, portions of impoundments 3, 5, 6, 7, 15, and Hunter Marsh, on the map and as described below. The described proposed designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek, Refuge impoundments, and the Sago Springs complex. Legal description: USGS 7.5 minute quad-Bitter Lake, N.Mex., T10S, R25E, NW¼ NE¼, SE¼ NE¼, E½ SE¼ Section 9; E½ NE¼, SW¼ NE¼, W½ SE¼ Section 16; E ½ NW¼, SW¼ NW¼, NW¼ NE¼, N½ NW¼, N½ SW¼ Section 21; N½ SE¼ Section 20; E½ NE¼, NE¼ NE¼ Section 29; NW¼ SW¼. T9S, R25E, SE¼ NE¼, SE¼,

SE¼ SW¼ Section 32. T10S, R25E NE¼, E½ NW¼, N½ SE¼, SE¼ SE¼ Section 5, W½ SW¼.



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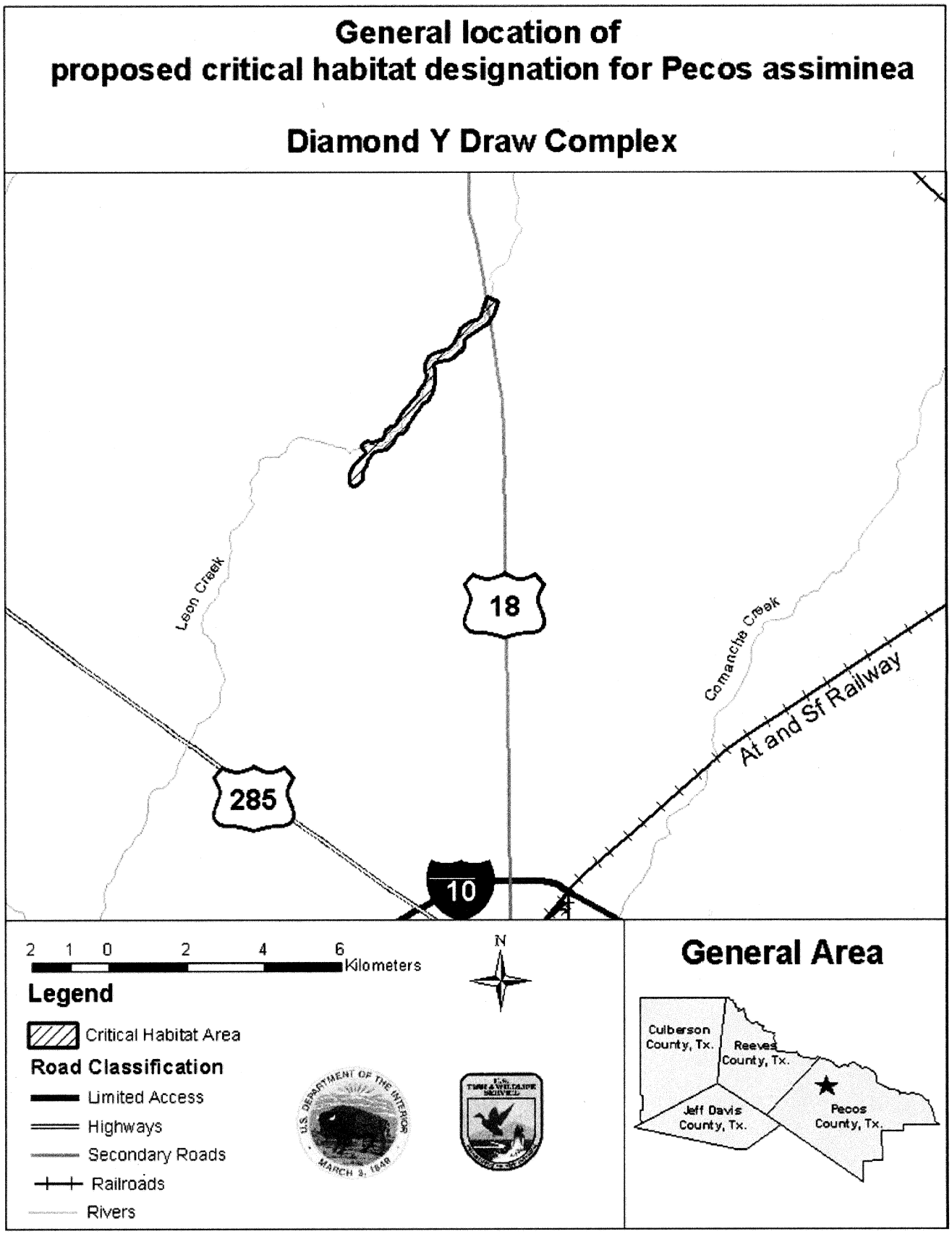
2. Within these areas, the primary constituent elements include permanent, flowing, unpolluted fresh to moderately saline water; slow to moderate velocities of water over substrates (a surface on which a plant or animal grows or is attached) ranging from deep organic silts to limestone cobble and gypsum substrates; presence of algae, submergent vegetation, and detritus in the substrata; water temperatures in the approximate range of 10–20 degrees Centigrade (50–68 degrees Fahrenheit) with natural diurnal and seasonal variation slightly above and below that range.

* * * * *

Pecos assiminea (*Assiminea pecos*)

1. A portion of the critical habitat for the Pecos assiminea is located in paragraph (f) of this section within the text for the Koster's tryonia. These species occur together, and critical habitat and the primary constituent elements are identical for these snails. In addition, critical habitat is depicted for the Pecos assiminea in Pecos County, TX, at the Diamond Y Springs complex. The proposed designation includes the Diamond Y Spring, which is located at UTM 13–698261 E, 3431372 N and approximately 6.8 km (4.2 mi) of its outflow ending at approximately UTM 13–701832 E, 3436112 N, about 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow and portion of Leon Creek are also proposed for designation as these areas are considered habitat for the Pecos assiminea. Critical habitat is also depicted for the Pecos assiminea in Reeves County, TX, at the East Sandia Spring complex. East Sandia Spring is located at UTM 13–698266 E, 3431347 N. The proposed designation includes the springhead itself, surrounding seeps and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea.



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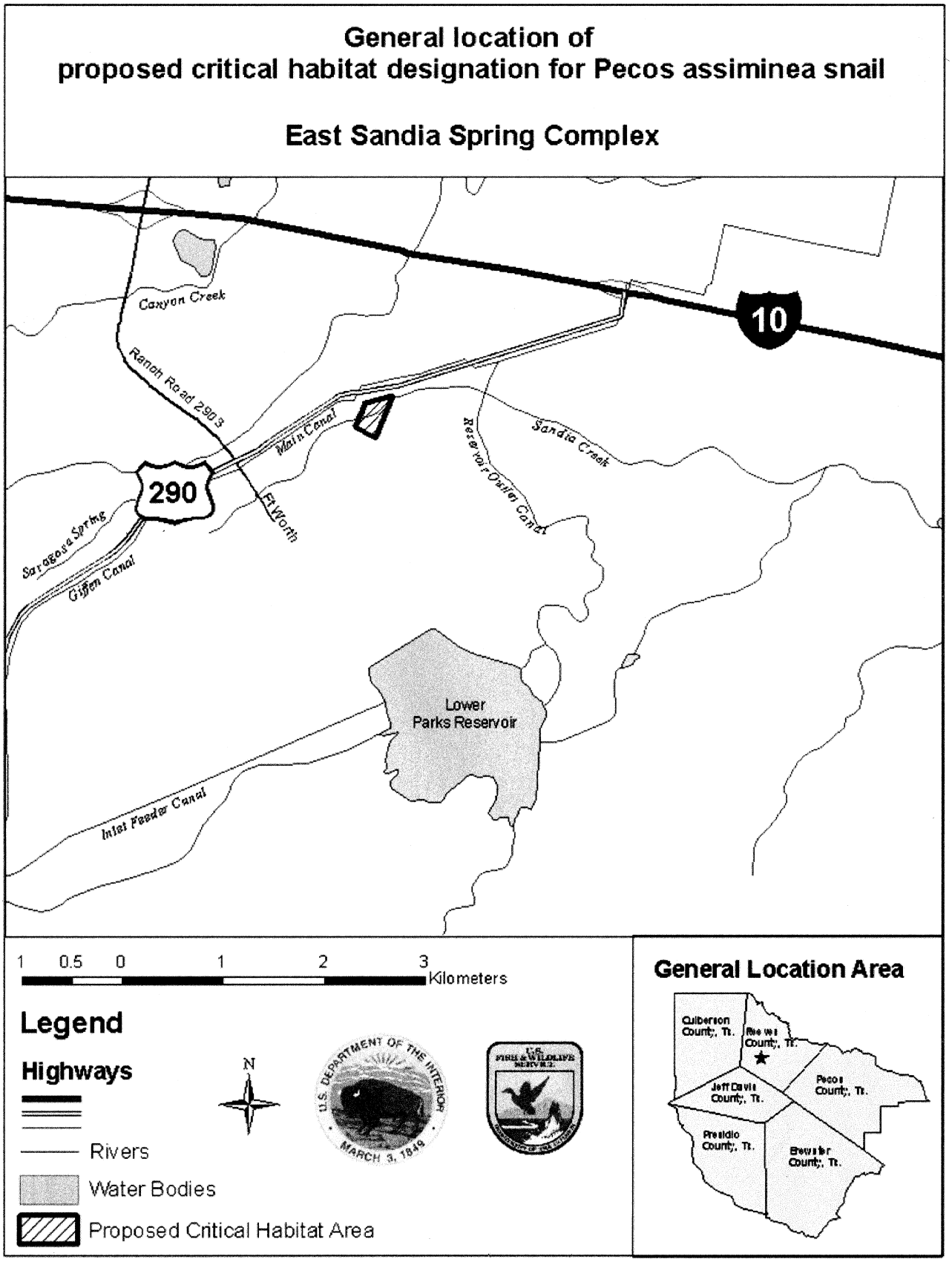

2. The primary constituent elements of critical habitat for Pecos assiminea are found in paragraph (f) of this section within the text for Koster's tryonia. In addition, Pecos assiminea requires moist soil at stream or

spring run margins with hydrophytic vegetation such as salt grass or sedges.

Roswell springsnail (*Pyrgulopsis roswellensis*)

The critical habitat map and description for the Roswell springsnail is located in paragraph (f) of this section within the text for the Koster's tryonia. These species occur together and critical habitat and the primary constituent elements are identical for these snails.

* * * * *

(h) *Crustaceans.*

* * * * *

Noel's amphipod (*Gammarus desperatus*)

The critical habitat map and description, including the primary constituent elements, for the Noel's amphipod is located in paragraph (f) of this section, within the text for the Koster's tryonia. These species occur together, and critical habitat and the primary constituent elements are identical for this snail and the Noel's amphipod.

Dated: January 29, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–3140 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020402B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day Council meeting on February 26 and 27, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday and Wednesday, February 26 and 27, 2002. The meeting will begin at 9:00 a.m. on Tuesday and 8:30 a.m. on Wednesday.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, February 26, 2002

Following introductions, the Council will consider final adoption of the Deep-Sea Red Crab Fishery Management Plan (FMP) documents, including a description of measures, draft regulations, and summary of impacts. The FMP contains measures to implement a controlled access program for the directed red crab fishery, a target total allowable catch level, days-at-sea limits, trip limits, and trap limits for vessels in the controlled access program. If adopted by the Council, the FMP will be forwarded to the Secretary of Commerce for consideration. The Skate Committee will ask for approval of the Draft Skate FMP and Draft Environmental Impact Statement, including the identification of preferred alternatives and a public hearing document. The discussion will include review and approval of the Habitat Committee's recommendations for the designation of skate Essential Fish Habitat.

Following these reports, the Council will discuss the possibility of future action concerning the scheduled annual review of the status of whiting stocks and the effectiveness of whiting management measures. These issues will be discussed in the context of the 2003 whiting default measures in the Northeast Multispecies FMP and whether action is necessary to revise those measures. The Council's Research Steering Committee will provide a brief update on its most recent activities. The Scallop Committee intends to ask for approval of additional management alternatives to be included in Draft Amendment 10 to the Atlantic Sea Scallop FMP and analyzed in the Draft Supplemental Environmental Impact Statement. Primary issues include alternatives to minimize bycatch and minimize adverse impacts on habitat in the sea scallop fishery. Prior to adjourning for the day, the Council will review and possibly approve a proposal to improve the enforceability of measures to address operator permit sanctions. The Council is considering endorsing an action that would hold fishing boat owners and operators responsible for individuals onboard vessels who are known by the owners or operators to have had their operator's permit suspended or revoked because of fishing violations.

Wednesday, February 27, 2002

The remainder of the Council meeting will focus on addressing issues associated with Amendment 13 to the Northeast Multispecies FMP. These include a review of events associated with recent litigation, a possible consideration and approval of groundfish status determination criteria for use in Amendment 13, the approval of Amendment 13 goals and objectives and the approval of Groundfish Committee recommendations for an amendment development process.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3488 Filed 2–8–02; 12:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 29
Tuesday, February 12, 2002

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE84

Small Business Size Regulations; Petroleum Refineries

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to modify the small business size standard for petroleum refiners for purposes of Federal Government procurement. SBA proposes to increase the capacity component of the size standard from 75,000 barrels per day (bpd) to 155,000 barrels per calendar day (bpcd); to define the capacity measure in bpcd; and to measure a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. The proposed revision is a better definition of the size of business in this industry that SBA believes should be eligible as small refiners for Federal procurement programs.

DATES: SBA must receive comments on or before March 14, 2002. SBA will make all public comments available to any person or concern upon request.

ADDRESSES: Address all comments concerning this proposed rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW., Washington, DC 20416, or via e-mail to *sizestandards@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618. You may also e-mail *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

SBA proposes to modify the small business size standard for Petroleum Refineries (North American Industry Classification System [NAICS] 324110) for purposes of Federal Government procurement. SBA proposes (1) to increase the capacity component of the standard from 75,000 barrels per day (bpd) to 155,000 barrels per calendar day (bpcd); (2) to clarify that the capacity component is measured in bpcd as defined by the U. S. Department of Energy, Energy Information Administration (EIA), rather than bpd; and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA.

The current small business size standard for NAICS 324110, Petroleum Refineries (formerly Standard Industrial Classification [SIC] 2911, Petroleum Refining), is 1,500 employees.[1] The 1,500 employee size standard applies to all Federal Government programs that provide benefits to concerns that qualify as a small business concern. SBA does not propose to modify the 1,500 employee size standard.

For purposes of Federal Government procurement, to qualify as a small business, there is an additional size standard component that specifies the maximum refining capacity of a small business. Footnote 4 to the Table of Small Business Size Standards (13 CFR 121.201) states:

> NAICS code 324110—For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

SBA received a request from a small petroleum refiner to delete the bpd part of the size standard for Petroleum Refineries. The requestor has two concerns. First, the requestor is concerned about the apparent domination of the refining industry by large refiners. Over the past ten years, larger refiners have merged with and acquired other concerns, both large and small, and formed large joint ventures. The requestor complained that under the current 75,000 bpd size standard, many smaller refiners cannot grow, merge with or acquire other refiners without losing their small business status. In the event a small refiner does so, and thereby loses its small business status, it will remain very small compared to larger refiners. Without the opportunity to participate in Federal Government procurement as small businesses, it would still be too small to compete successfully for larger Federal contracts in the open market.

Second, the requestor is concerned about the decline in small refiners' share of the U.S. total refining capacity. The requestor states that small refiners' share of the total U.S. capacity has declined from 7.8 percent in 1975, to 7.1 percent in 1984, to 6.7 percent in 1990, and to 4.1 percent in 1999. In twenty-four years, this is a decline of almost 50 percent.

Based on these concerns, SBA believes it should re-evaluate the capacity component of the Petroleum Refineries size standard as the small petroleum refiner requested. However, it does not agree that the refining capacity component should be eliminated from the size standard for Federal Government procurement. When SBA had proposed eliminating this component in 1991, comments strongly favored retaining it. Those commenters stated that there is no meaningful relationship between barrel capacity and the number of refinery employees. Thus, they claimed, eliminating the bpd requirement would not accurately reflect a small petroleum refiner. This was due to varying degrees of automation among refineries as well as the extent to which firms are engaged in non-refining activities. Based on SBA's industry analysis for this proposed rule, SBA believes that this remains the general opinion of most refiners.

Furthermore, refinery capacity is a standard reference for measuring refiners among one another, and it is a measure that is unique to the refining industry. EIA has used this measure for many years, and SBA believes it

[1] Effective January 1, 1997, the Federal Government, for statistical purposes, replaced the SIC system with NAICS. For purposes of small business size standards, SBA adopted the definitions of NAICS for all industries effective October 1, 2000. NAICS is a new statistical system, and there were changes to the descriptions of many industry structures in the shift from SIC to NAICS. According to *North American Industry Classification System United States, 1997,* the entire SIC 2911 is related to NAICS 324110. NAICS 324110 ''comprises establishments primarily engaged in refining crude petroleum into refined petroleum. Petroleum refining involves one or more of the following activities: (1) Fractionation; (2) straight distillation of crude oil; and (3) cracking.'' The size standard for NAICS 324110, Petroleum Refineries, remains the same as it was for SIC 2911, Petroleum Refining.

continues to be a useful and relevant size standard component for Federal procurement purposes. The 1,500 employee size standard applies to refiners for all other programs, but refinery capacity is directly related to refiners' ability to respond to Federal procurement of their petroleum products. Regardless of a refiner's number of employees, SBA does not believe that to qualify as a small refiner competing against other small refiners for Federal petroleum contracts that there should be no limit to its refining capacity.

History of the Size Standard

SBA first established a small business size standard for Federal Government procurement of petroleum products in 1955. The size standard was 1,000 employees with a refining capacity not to exceed 30,000 bpd. With this size standard, small businesses accounted for 7.8 percent of the total U.S. refining capacity. By 1975, this small business share of total capacity had fallen to 5.1 percent. Therefore, SBA increased the size standard to 1,500 employees with a 50,000 bpd capacity. This restored small business share to 7.8 percent of total U.S. capacity. By 1990, however, the small business share had again declined, to 6.7 percent of the total U.S. refining capacity.

On May 3, 1991, SBA proposed in the **Federal Register** to eliminate the 50,000 bpd component of the size standard entirely (56 FR 20832). SBA intended to simplify the size standard and make it the same as the single size criterion used for other industries and for other Federal Government programs. SBA believed that this would allow refining concerns that were slightly below the capacity limit to expand their refining facilities without losing their small business status. SBA received 24 comments to this proposal, 22 of which argued to retain the bpd component.

Therefore, on January 7, 1992, SBA proposed in the **Federal Register** (57 FR 541) to increase the bpd component from 50,000 bpd to 75,000 bpd. SBA received comments to this proposal that were mixed on the question of whether or not to increase the bpd component.

On May 1, 1992, SBA published in the **Federal Register** (57 FR 18808) its final rule adopting the 75,000 bpd component of the size standard. SBA did not change the 1,500 employee size standard. SBA has not changed or proposed to change the petroleum refiner size standard since then.

Size Standards Methodology

Congress grants SBA discretion on how to establish detailed small business size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program,'' available on SBA's website at *http://www.sba.gov/library/soproom.html,* sets out four evaluation factors for establishing size standards:

1. Industry structure and economic characteristics;
2. The impact of different size standards on SBA programs and their objectives;
3. Whether a size standard excludes businesses that are dominant in the industry; and,
4. Other factors that SBA determines may also apply.

SBA's research, public comments, industry uniqueness, or how or to what program(s) the size standard applies may require SBA to consider special factors or to modify how it generally assesses a particular size standard, but that is not the norm. If SBA does modify its methodology, it explains both the general methodology and how SBA assessed the size standard for the case at hand. SBA applies no formulas or weighting to the industry factors it analyzes. Below SBA explains how it analyzes the economic characteristics of an industry, the impact of a size standard on SBA programs, and how it evaluates whether a concern at or below a size standard could be considered dominant in the industry under review.

Industry Analysis

The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (U.S.C. 632(a)(3)). Two ''anchor size standards'' apply to most industries—500 employees for manufacturing industries and $5 million for nonmanufacturing industries. Anchor size standards are presumed appropriate for an industry unless larger concerns are much more significant within that industry than the ''typical industry.''

Since this rule is evaluating the capacity component of the Petroleum Refineries size standard, SBA cannot compare it to any other industry. The industry analysis will evaluate changes in the Petroleum Refineries industry over the last 10 years and their implications for the current 75,000 bpd size standard. SBA's analysis assesses data on the characteristics of the sixty-five refiners listed in *Petroleum Supply Annual 2000,* Volume 1, Table 40, published by EIA. The *Petroleum Supply Annual 2000* is available on EIA's website, http://www.eia.doe.gov/. Table 40 ranks refiners by their total Operable Crude Oil Distillation Capacity, as of January 1, 2001. Virtually all data used to compare the relative sizes of refiners reflect refiners' capacity. The analysis will consist of the same factors as other size standard analyses.

In 13 CFR 121.102 (a) and (b), SBA lists the primary evaluation factors that describe the structural characteristics of an industry—average concern size, distribution of concerns by size, start-up costs and industry competition. SBA also analyzes the possible impact of a size standard revision on SBA programs. These five factors are the most important ones that SBA evaluates when establishing a size standard. However, SBA will also consider and evaluate other information that is relevant to determining a size standard for a particular industry. Public comments to proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average concern size. This is generally the total industry receipts, number of employees, or other measure of size divided by the number of concerns in the industry. The higher the average concern size the higher size standard that can be supported for the industry. For this proposed rule SBA has determined the average sized refiner from Table 40, ''Refiners' Operable Atmospheric Crude Oil Distillation Capacity as of January 1, 2001,'' from Petroleum Supply Annual 2000, Volume 1, published by EIA.

2. Distribution of concerns by size. SBA usually examines the proportion of industry receipts, employment or other economic activity accounted for by concerns of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller concerns, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of concerns indicates that economic activity is concentrated among the largest concerns in an industry. In this rule SBA compares the size of refiners based on their total petroleum refining capacity. To demonstrate industry changes from when SBA last changed this size standard in 1992, SBA also compares current data on the distribution of refiners by size with data from 1989 and 1990.

3. Start-up costs. These affect a concern's initial size because entrants to an industry must have sufficient capital to start and maintain a viable business. To the extent that concerns entering an industry have greater financial

requirements than concerns in other industries, SBA considers a higher size standard. The requestor has stated that the bpd capacity constrains small refiners' growth and expansion. In this rule, rather than looking at refinery start-up costs, SBA considers refiners' ability to consolidate their resources. This proposed rule, if adopted, should assist them in expanding their resources, because they will be able to share and thereby reduce the concomitant capital costs of expansion.

4. Industry competition. SBA normally assesses this by measuring the proportion or share of industry receipts obtained by concerns that are among the largest concerns in an industry. In this proposed rule, SBA compared the total capacity of the four and the eight largest refiners. These comparisons are generally referred to as ''four-firm'' and ''eight-firm'' concentration ratios. When a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a higher size standard.

5. Competition for Federal procurements and SBA Financial Assistance. SBA evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

SBA usually assesses the impact of a proposed size standard on other SBA programs to determine whether the current size standard may restrict the level of financial assistance to concerns in that industry. The bpd capacity limit that this proposed rule addresses applies only to the Federal Government's procurement of petroleum products. Therefore, this proposed change, if adopted in final form, will have no affect on SBA financial assistance or other programs.

Average Size Refiner and Refinery

Based on data published by EIA from 1990 to 2000, there was a marked increase in the average refiner size, from 144,185 bpcd to 254,029 bpcd (see Table 1, below). Similarly, average refinery size also increased significantly between these years, from 75,961 bpcd to 104,506 bpcd. These changes reflect both fewer refineries and fewer refiners at the end of 2000 than in 1990 while total combined capacity has increased. Over the last 10 years, mergers, acquisitions, joint ventures, and shutdowns of refineries have resulted in fewer refiners. The increases in average refinery and refiner size support an increase to the current refinery capacity component of the size standard.

TABLE 1

	1990	2001	Percent change
Number of Refiners	108	65	(40.0)
Number of Operable Refineries	205	158	(22.9)
Total U.S. Capacity (bpcd)	15,571,966	16,511,871	6.0
Average capacity per refiner (bpcd)	144,185	254,029	76.2
Average capacity per refinery (bpcd)	75,961	104,506	37.5

Source: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''

Note: Table 1 data, and all further data in this proposed rule, are based on and refer to ''barrels per calendar day'' (bpcd), as EIA defines the term, rather than ''bpd,'' as used in SBA's existing size standard.

Distribution of Refiners and Refineries by Size

The distribution of refiners by capacity since the last change to the size standard shows a significant trend towards larger refiners in the industry. Table 2, below, compares end of 1989 data used in the 1992 size standard change with data as of January 1, 2001.

TABLE 2

Bpcd	Number of refiners		Number of refineries		Percent of total U.S. capacity	
	1989	2001	1989	2001	1989	2001
>1,000,000	3	4	22	29	24.7	34.9
500,001–1,000,000	6	9	29	42	27.7	36.7
200,001–500,000	12	7	36	19	23.9	13.8
100,001–200,000	12	10	25	17	11.3	8.8
50,001 to 100,000	9	6	13	7	4.2	1.8
30,001 to 50,000	15	7	17	10	4.0	2.1
≤30,000	51	22	57	26	4.2	1.9
Totals	108	65	199	150	100.0	100.0

Source for 2001 data: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''
Source for 1999 data: U.S. Department of Energy, *Petroleum Supply Annual,* 1989.

Examining the distribution of refineries shows the same long-term trends. Refineries of 50,000 bpcd or less represent only 35.9 percent of total refineries in 2001 as compared to 53.8 percent in 1989 (see Table 3, below).

TABLE 3

Refinery size	Percent of total operable refineries	
	1989	001
Refineries > 100,000 bpcd	27.6	37.9
Refineries 50,001 to 100,000 bpcd	18.6	26.1
Refineries 10,001 to 50,000 bpcd	34.7	26.1
Refineries ≤ 10,000 bpcd	19.1	9.8
Totals	100.0	100.0

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

This increased share of capacity among large refineries is similar to the trend SBA observed when it last studied this industry for the 1992 size standard change. Table 4, below, compares the 1979 to 1989 changes with the 1989 to 2001 changes.

TABLE 4

Refinery size	Changes in percent of total operable refineries	
	1979–1989	1989–2001
Refineries > 100,000 bpcd	8	5.5
Refineries 50,001 to 100,000 bpcd	−16	8.1
Refineries 10,001 to 50,000 bpcd	−43	−42.0
Refineries ≤ 10,000 bpcd	−63	−60.5

Source for 1989–2001 data: EIA, *Annual Energy Review,* Table 5.9, ''Refinery Capacity and Utilization, 1949–2000.''
Source for 1979–1999 data: U.S. Department of Energy, *Petroleum Supply Annual,* 1989.

Small refiners, those who meet the current 75,000 bpcd size standard, represent a very small portion of total industry's U.S. capacity. Table 5, below, presents the percentages of total U.S. refining capacity for those refiners above and below the current 75,000 bpd size standard in 2001. The current small refiner share of total industry capacity is 5.8 percent, well below the historical share of approximately 7.5 percent.

TABLE 5

Refiners	Number of bpcd	Percent of total bpcd
Total U.S. Capacity—65 refiners	16,595,371	100.0
Total for the 30 refiners > 75,000 bpcd	15,635,960	94.2
Total for the 35 refiners ≤ 75,000 bpcd	959,411	5.8

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

Furthermore, there is significant disparity between the average capacity of all refineries owned and/or operated by the thirty largest refiners and the average capacity of refineries owned and/or operated by the thirty-five small refiners. Table 6, below, shows the differences between average capacities of small and large refiners in 2001.

TABLE 6

Refiner	Average Number of bpcd	Number of refineries
Total U.S. Capacity—65 refiners	107,067	155
Average for the 30 refiners > 75,000 bpcd	146,130	107
Average for the 35 refiners ≤ 75,000 bpcd	19,388	48

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

SBA concludes that these continuing trends towards larger refiners in the industry and the reduced small refiner share of industry capacity support an increase to the capacity component of the petroleum refineries size standard.

Industry Concentration

The refining industry in the U.S. has undergone substantial restructuring since SBA last increased the size standard. The result has been fewer but larger refiners with fewer but larger refineries. At the same time total U.S. refining capacity is greater. With this industry realignment and increased U.S. petroleum refining capacity, the total U.S. refining capacity has become increasingly concentrated among a few of the largest refiners. Since 1989, the top four and top eight refiners have increased their share of total industry refining capacity (see Table 7, below). The increasing trend of industry concentration further supports an

increase to the current capacity size standard.

TABLE 7

Refiners	Percent of U.S. refining capacity as of January 1	
	1990	2001
Four largest	31.0	34.9
Eight largest	49.1	54.3

Source: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40.

Capital Costs

The Petroleum Refineries industry is one of the most capital intensive industries in the economy. In recent years, increasing environmental regulations (such as those required by the Clear Air Amendments of 1990) have required refiners to make substantial investments in new equipment. For example, the Environmental Protection Agency (EPA) has estimated that its regulations pertaining to sulfur content in gasoline will require refiners, on average, to spend approximately $44 million to remove sulfur during the refining process and an additional $16 million per refinery for operating costs associated with desulfurization unit (see 65 FR 6776, dated February 10, 2000). EPA is also considering significant reductions in the use of methyl tertiary butyl ether that will require additional capital investments (see Oil and Gas Journal, dated March 27, 2000).

Environmental requirements have led, in part, to the consolidations resulting in a fewer number of small refiners in the industry over the last 10 years. Refiners have increased operations to spread the cost of environmental compliance across large volumes and to lower costs through operating efficiencies. The expected environmental demands on the industry and the ability of small refiners to spread investment costs across large volumes is another indicator that SBA should increase its refining capacity size standard.

To reduce costs larger refiners have formed downstream mergers and joint ventures, including some with non-U.S. producers. They thereby reduce their overall investment costs in their refineries. By doing so, they join not only their refining operations, but their marketing operations as well. Joint ventures allow refiners to share these costs without the problems associated with mergers and acquisitions. The small refiners closest to the current size standard, that is those small refiners with capacities not far below 75,000 bpcd, cannot enter into the same type of agreements without jeopardizing, and likely losing, their small business size status. SBA believes that increasing the bpcd capacity limit will allow these refiners to form joint ventures for similar purposes without losing their small business status for Federal procurement programs.

Federal Government Procurement Since 1990

Small refiners' share of Federal Government procurements of petroleum has moderately decreased since 1989. Federal Procurement Data Center (FPDC) data for 1989, which SBA analyzed prior to revising the size standard in 1992, indicated that small businesses received about 16 percent of those procurements. For fiscal years 1998–2000, small business share declined to as low as 10.5 percent in FY 1999, while averaging 13.8 percent for the three years (see Table 8, below). Although the decline in share of Federal petroleum contracts to small refiners has not been large, an increase to the size standard will likely maintain the share of small refiners or restore it to previous levels.

TABLE 8

	Total federal petroleum procurements ($,000)	Small business amount ($,000)	Small business amount (Percent)
1998	$2,123,529	$327,478	15.4
1999	1,902,269	199,994	10.5
2000	2,979,095	438,073	14.7
Three year total	7,004,893	965,545	.....
Three year average	2,334,964	321,848	13.8

Sources: EIA, *Petroleum Supply Annual 2000,* Volume 1, Table 40; EIA, *Petroleum Supply Annual 1999,* Volume 1, Table 40; and EIA, *Petroleum Supply Annual 1998,* Volume 1, Table 40.

SBA's Proposals To Revise the Size Standard

SBA is proposing to increase the 75,000 bpd component of the size standard to 155,000 bpcd for purposes of Federal Government procurement. SBA is proposing this increase for the following reasons. Refineries with 155,000 bpcd or less in petroleum capacity account for 7.6 percent of total U.S. petroleum refining. This size standard restores the share of small refiners to approximate the same level that resulted from the 1992 increase to 75,000 bpd. As stated above (see Table 3, above), small refiners currently account for 5.8 percent of total U. S. capacity.

Currently defined small refiners will be able to grow, merge, joint venture or create other forms of consortia, and at the same time retain their small business status. The proposed increase to 155,000 bpcd is slightly more than double the current size standard refining capacity component. At this level, a small refiner could operate a refinery equal to the size of the average refinery of the 30 large refiners in the industry January 1, 2001 (see Table 6, above). The proposed level should enable small refiners to expand to

achieve operational efficiencies needed to accommodate increasing environmental requirements. An increase to a lower capacity, while also allowing expansion, may be too limiting for small refiners to achieve meaningful operating efficiencies.

Any refiner at or below 155,000 bpcd and with less than 1,500 employees will qualify as a small refiner. Refiners that have more than 1,500 employees or have capacities over 155,000 bpcd generally have significant operations outside of petroleum refining.

SBA proposes to clarify the capacity measure for determining small business size status by replacing the term ''barrels per day'' with the term ''barrels per calendar day.'' SBA believes the term ''barrels per day'' does not reflect the precise intent of the regulation, and can raise questions about whether SBA means ''barrels per calendar day'' or ''barrels per stream day.'' SBA proposes to accept and use ''Barrels per Calendar Day'' as EIA has most recently defined it in the glossary to Petroleum Supply Annual 2000, Volume 1. EIA defines ''barrels per calendar day'' as follows:

Barrels Per Calendar Day. The maximum number of barrels of input that can be processed during a 24-hour period after making allowances for the following limitations:

The capability of downstream facilities to absorb the output of crude oil processing facilities of a given refinery. No reduction is made when a planned distribution of intermediate streams through other than downstream facilities is part of a refinery's normal operation;

The types and grades of inputs to be processed; the types and grades of products expected to be manufactured;

The environmental constraints associated with refinery operations;

The reduction of capacity for scheduled downtime such as routine inspection, mechanical problems, maintenance, repairs, and turnaround; and

The reduction of capacity for unscheduled downtime such as mechanical problems, repairs, and slowdowns.

SBA proposes to clarify further the capacity measure for determining small business size status by adding to footnote 4 the phrase ''total Operable Atmospheric Crude Oil Distillation Capacity'' as EIA uses the term in Petroleum Supply Annual 2000, Volume 1. EIA defines ''Operable Capacity'' as follows:

Operable Capacity. The amount of capacity that, at the beginning of the period, is in operation; not in operation and not under active repair, but capable of being placed in operation within 30 days; or not in operation but under active repair that can be completed within 90 days. Operable capacity is the sum of the operating and idle capacity and is measured in barrels per calendar day or barrels per stream day.

EIA defines Atmospheric Crude Oil Distillation'' as follows:

Atmospheric Crude Oil Distillation. The refining process of separating crude oil components at atmospheric pressure by heating to temperatures of about 600° to 750° F (depending on the nature of the crude oil and desired products) and subsequent condensing of the fractions by cooling.

By stating ''155,000 bpcd of total Operable Atmospheric Crude Oil Distillation Capacity,'' it will be clear that the size standard includes both a concern's operating and its idle capacity. This is consistent with EIA that uses the total of operating and idle capacities in Petroleum Supply Annual 2000, Volume 1, Table 40, ''Refiners'' Operable Atmospheric Crude Oil Distillation Capacity,'' and in earlier years as well.

Dominant in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no firm at or below the proposed size standards for petroleum refiners would be of a sufficient size to dominate its field of operation. The largest firm at the proposed size standard level generates less than 0.9% of total U. S. refining capacity. This level of market share effectively precludes any ability for a refiner at or below the proposed size standard to exert a controlling effect on this industry.

Alternatives to 155,000 Bpcd That SBA Considered

SBA considered three alternatives to its proposal. Each of these is discussed below.

1. Delete the capacity requirement, the request for which prompted SBA's examination of the size standard. The introduction to this rule explain the reasons why SBA has elected to increase the capacity component rather than eliminating it. SBA, however, welcomes comments on the advantages and disadvantages of retaining or eliminating the capacity component.

2. Propose a capacity between 75,000 bpcd and 155,000 bpcd. SBA estimates that capacity below 155,000 bpcd would not restore small businesses to the level they had before the size standard was last increased since no refiners would gain small business status. A 155,000 bpcd capacity limit includes all refiners that have 1,500 employees or less. At 155,000 bpcd, two additional refiners would qualify as small. Further, a capacity limit below 155,000 bpcd may be insufficient to allow small refiners to grow, merge, or otherwise share resources, without losing their small business size eligibility. This would defeat the main purpose of increasing the size standard.

3. Propose higher capacity limits. SBA considered capacities above 155,000 bpcd. SBA believes that 155,000 bpcd capacity is sufficient to enable small refiners to merge or form alliances and thereby reduce their costs while increasing the profitability of their activities. Further, SBA estimates that a higher bpcd capacity would enable no more refiners to become eligible as small businesses, because refiners with capacities above 155,000 bpcd have, to the extent SBA could determine, more than 1,500 employees.

Comments Requested

SBA requests comments on its proposal to increase the capacity component of the size standard from 75,000 bpd to 155,000 barrels per calendar day (bpcd) total Operable Atmospheric Crude Oil Distillation. While SBA proposes this numerical capacity limit for small refiners to qualify as small businesses, SBA will consider the other alternatives as well, including the elimination of a bpcd limit, if comments warrant SBA's doing so. SBA also requests comments on its proposals to clarify the size measure by adopting the more precise term of ''barrels per calendar day'' in place of ''barrels per day.'' SBA also requests comment on its proposal to measure in bpcd a refiner's total Operable Atmospheric Crude Oil Distillation capacity. Specifically, SBA requests comments on the following issues:

1. Whether SBA should eliminate the capacity component, as requested, and the reasons why having no capacity limit as a component of the standard would be better for small refiners than retaining one.

2. Whether 155,000 bpcd is sufficient capacity for refiners to grow, merge, consolidate or otherwise share resources for Federal Government procurement,

without losing their small business eligibility.

3. Whether SBA should adopt a capacity that is higher or lower than 155,000 bpcd. Commenters who recommend an alternative bpcd limit should also provide reasons why they believe their recommended capacity would be a more appropriate size for this industry for purposes of Federal Government procurement.

4. Whether SBA's estimate of the number of additional refiners that may gain eligibility as small refiners, as well as SBA's estimate of their capacity, accurately reflects the possible result of this proposed change.

5. Whether an increase to 155,000 bpcd would have any adverse affects on currently defined small refiners.

6. Whether SBA's proposal to adopt ''barrels per calendar day'' to replace ''barrels per day'' is acceptable.

7. Whether SBA's proposal to adopt as a uniform measurable capacity a refiner's total Operable Atmospheric Crude Oil Distillation as used by EIA is acceptable.

8. Whether SBA should establish the 155,000 bpcd and 1,500 employees size standards to all Federal programs using a small business definition for a small petroleum refiner instead of just to Federal Government procurement. If SBA receives favorable comments on this, SBA will consider issuing a separate proposed rule on the issue.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. The rule affects Federal Government agencies purchasing refined petroleum products and the businesses that compete in selling petroleum products to the Federal Government. Increasing the 75,000 bpcd size standard to 155,000 bpcd will enable small refiners to expand their refining operations or to merge with other small refiners and continue to compete for Federal petroleum procurements set aside for small businesses or for the 8(a) and HUBZone Empowerment Contracting Programs, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Also, two refiners may obtain small business status under the proposed size standard allowing them to compete for set-aside petroleum procurements. Federal agencies could benefit from the higher size standards if the newly defined and expanding small refiners compete for more set-aside petroleum procurements. The larger base of small refiners would likely increase competition and lower the prices on set-aside petroleum procurements. A higher size standard may also influence Federal agencies to set aside more petroleum procurements. If procurements switch from competition among all sources to competition among only small businesses, prices could increase to the Federal Government. SBA believes that price increases associated with set-aside procurements would be minimal since set-asides must be award at fair and reasonable prices. The increased size standard will allow, and possibly encourage, small refiners to increase their operational efficiencies without jeopardizing their small business status. Theses expanding small refiners would become more competitive and thereby result in lower prices to the Federal Government and to private sector customers.

The higher size standard may have distributional effects among large and small refiners. Although the actual outcome of the gains and loses among small and large refiners cannot be estimated with certainty, several trends are likely to emerge. The newly defined and expanding small refiners may obtain petroleum contracts from what would have been awarded to currently defined small refiners. If Federal agencies were to set aside more procurements for small businesses, this could allow currently defined small refiners to compete for more petroleum procurements and offset potential losses to the newly defined and expanding small refiners on other set-aside procurements. Large refiners would lose some Federal petroleum contracts to small refiners if Federal agencies decide to set aside more petroleum procurements. The potential loss of contracts to large businesses would be limited to the amount of petroleum the newly defined and expanding small refiners were willing and able to sell to the Federal Government. Small nonmanufacturers may also obtain additional petroleum contracts as a result of a higher petroleum size standard. On set-aside petroleum procurements, a small nonmanufacturer must supply the product of a small petroleum refiner. With a larger base of small refiners, nonmanufacturers would have access to a larger supply of petroleum products from small refiners. The potential gain of contracts to small nonmanufacturers would be limited to the amount of petroleum the newly defined and expanding small refiners were willing and able to supply through a third party as opposed to selling directly to the Federal Government.

The proposed rule, however, does not create a serious inconsistency or otherwise interfere with another agency's action; materially affect the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients; or raise novel, legal or policy issues arising out of legal mandates, President's priorities, or the principles set forth in EO 12866.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent possible under standards in Section 3 of the order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

Under the Regulatory Flexibility Act (RFA) SBA has determined that this rule as drafted, including the alternatives to the proposed standard, will not have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this rule addressing (a) the reasons and objectives of the rule; (b) SBA's description and estimate of the number of small entities to which the rule will apply; (c) the projected reporting, record keeping, and other compliance requirements of the rule; (d) the relevant Federal rules which may duplicate, overlap or conflict with the rule; and (e) alternatives considered by SBA.

(a) Reasons for This Action

As discussed in the supplemental information, this rule, if adopted, will better define a small refiner for purposes of Federal Government procurement of refined petroleum. It will include in the definition as small all U.S. refiners that have 1,500 employees or less. It will also increase the small refiners' share of the U.S. total refining capacity to approximately the level it was after SBA's last two increases to this standard. It will allow small refiners to respond to larger Federal Government procurement opportunities. At the same time they will be able to expand and grow by forming joint ventures and similar resource sharing arrangements

without losing their small business eligibility for Federal Government procurement.

(b) Objectives and Legal Basis for the Proposed Rule

SBA's objective is to define ''small refiner'' better and to enable small businesses to participate in more and larger Federal Government procurement opportunities. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards.

(c) Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

SBA estimates that there will be no more than two newly designated small businesses. Because SBA does not propose to change the 1,500 employee size standard, refiners will only gain eligibility if they have less than 155,000 bpcd as well as no more than 1,500 employees. With regard to refiners that have capacities in excess of 75,000 bpcd, SBA described in the **SUPPLEMENTARY INFORMATION** that it based its estimate of number of employees on 10Ks filed with the Securities and Exchange Commission, Annual Reports and other information available to the public.

Refiners that currently have less than 75,000 bpd capacities are unaffected by this proposed rule, except to the extent that they may take advantage of opportunities arising from this rule. Also, SBA does not believe there will be significantly increased competition that could harm small or other than small business refiners. On the contrary, small businesses will be able to bid on more and larger Federal procurements in a fashion much like the largest refiners, though on a smaller scale, proportionate to their sizes.

Federal procurement programs are voluntary, and this proposed rule, if adopted, will not impose any significant costs on any small business companies participating in Federal procurement programs. Further, the rule will, if adopted, not affect the amount of refined petroleum purchased by the Federal Government. Federal Government procurement dollars are expected to remain about the same. Since SBA estimates that no more than two refiners, not now small, could become eligible, they would have little impact on the distribution of total Federal procurement dollars. Furthermore, the two refiners are not currently participating in Federal procurement, according to FPDC data. In addition, since more smaller refiners will be able to share resources, they will be eligible for more Federal procurement dollars. However, given that all small refiners combined will still only account for 7.7 percent of total U.S. refining capacity, the impact on larger refiners will be negative but negligible, though it will be a positive and significant one on small refiners.

(d) Imposition of Additional Reporting or Recordkeeping Requirements on Small Businesses

This rule does not impose any new information collection requirements on small refiners or other small businesses, and therefore will impose none that could require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The proposed new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing the petroleum refiners' capacity size standard expands access to Federal Procurement programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(e) Relevant Federal Rules That May Duplicate, Overlap or Conflict With This Rule

This rule does not duplicate, overlap or conflict with any other Federal rules. This rule applies to the Federal Government's procurement of refined petroleum products only, and does not apply to any other Federal program for which a refiner would have to qualify as a small business.

(f) Alternatives That SBA Considered

SBA considered three alternatives to this rule, namely deleting the capacity requirement in its entirety, and capacities above and below 155,000 bpcd. SBA explains in the **SUPPLEMENTARY INFORMATION** above why it opted to propose 155,000 bpcd rather than another amount or none at all. SBA specifically asks for comments on each of these alternatives, however, and will consider an alternative if public comments support one of them in lieu of the proposed 155,000 bpcd.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for Part 121 is revised to read as follows:

Authority: Pub L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), 638, 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, under Subsector 324, the entry for NAICS Code 324110 is republished and footnote 4 is revised to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System Codes?

* * * * *

NAICS codes	NAICS description (N.E.C. = not elsewhere classified)	Size standard in number of employees or millions of dollars
*	*	*
324110	Petroleum Refineries	[4]1,500
*	*	*

Footnotes

* * * * *

[4] *NAICS code 324110*—For purposes of Federal Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 155,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

* * * * *

Dated: November 1, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3344 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 01N–0576]

Medical Devices; Reclassification of the Cutaneous Carbon Dioxide ($PcCO_2$) and the Cutaneous Oxygen (PcO_2) Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class II (performance standards) into class II (special controls). FDA is also proposing to reclassify the cutaneous oxygen (PcO_2) monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls) and is reproposing the reclassification of the cutaneous oxygen (PcO_2) monitor for all other uses from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' which would serve as the special control if this proposal becomes final.

These reclassifications are being undertaken on the agency's own initiative based on new information under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997.

DATES: Submit written or electronic comments on the proposed rule by April 15, 2002. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cutaneous Carbon Dioxide ($PcCO_2$) Monitor

In the **Federal Register** of July 25, 1988 (53 FR 27878), FDA issued for public comment the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel that FDA reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class III into class II. On December 9, 1988, FDA sent to all known manufacturers of the device a letter (order) that classified the cutaneous carbon dioxide monitor, and substantially equivalent devices of this generic type, from class III to class II. In the **Federal Register** of June 28, 1989 (54 FR 27160), FDA published a final rule reclassifying the cutaneous carbon dioxide monitor from class III (premarket approval) into class II (performance standards) and added new 21 CFR 868.2480 *Cutaneous carbon dioxide ($PcCO_2$) monitor*.

B. Cutaneous Oxygen (PcO_2) Monitor

In the **Federal Register** of November 2, 1979 (44 FR 63292), FDA published a proposal to classify 149 anesthesiology devices, including the cutaneous oxygen monitor (§ 868.2500). In the **Federal Register** of July 16, 1982 (47 FR 31130), FDA published a final rule classifying the cutaneous oxygen monitor into either class II or class III, depending on the intended use of the device. The cutaneous oxygen monitor intended for use in monitoring infant patients who are not under gas anesthesia was classified as class II (performance standards). This action was based on FDA's belief that there was sufficient data to show the device is safe and effective for this use and that a performance standard would provide reasonable assurance of safety and effectiveness of the device. The final rule also classified into class III the cutaneous oxygen monitor intended for all other uses, that is, in a noninfant patient or in any patient, including an infant, who is under gas anesthesia

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing section 515(i) of the act (21 U.S.C. 360e(i)), and providing deadlines for submission of the information. In response to that notice, on October 21, 1996, Radiometer Medical A/S submitted a request for reclassification of the cutaneous oxygen monitor for use in noninfant patients not under gas anesthesia.

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. Among the 38 preamendments devices was the cutaneous oxygen monitor intended for all uses other than in an infant patient who is not under gas anesthesia. An American Society for Testing and Materials standard was proposed as the special control. FDA invited interested persons to comment on the proposed rule by June 14, 1999. FDA received six comments and two requests for extension of the comment period for certain devices. One of the requests for extension of the comment period was from a manufacturer of the cutaneous oxygen monitor. The manufacturer recently withdrew this request. None of the comments addressed the cutaneous oxygen monitor.

In the **Federal Register** of March 31, 2000 (63 FR 17138), FDA published a final rule reclassifying 28 of the 38 devices for which it had proposed reclassification. FDA reopened the comment period for 6 of the 38 devices (Vascular graft prosthesis of less than 6 millimeters diameter, 21 CFR 870.3450; Pacemaker lead adapter, 21 CFR 870.3620; Annuloplasty ring, 21 CFR 870.3800; Cardiopulmonary bypass defoamer, 21 CFR 870.4230; Cardiopulmonary bypass arterial blood line filter, 21 CFR 870.4260; and Cardiopulmonary bypass oxygenator, 21 CFR 870.4350) for which it had proposed reclassification and intends to reopen the comment period for 3 other devices in the near future. The remaining of the 38 preamendments devices is the cutaneous oxygen monitor. FDA is, in this notice, reproposing the reclassification of the cutaneous oxygen monitor for all other uses from class III (premarket approval) into class II (special controls).

II. Proposed Rule

FDA is proposing to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor and the cutaneous oxygen (PcO_2) monitor intended for use in monitoring infant patients who are not under gas anesthesia, from class II (performance standards) into class II (special controls).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other

appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act (21 U.S.C. 360c(a)(1)(B)). At the time the cutaneous carbon dioxide ($PcCO_2$) monitor and the cutaneous oxygen (PcO_2) monitor intended for use in monitoring infant patients who are not under gas anesthesia were classified, 1987 and 1982 respectively, special controls were not a regulatory option. FDA has now developed a draft guidance and is proposing to make it the special control for these products.

FDA is also reproposing the reclassification of the cutaneous oxygen monitor for all other uses from class III (premarket approval) into class II (special controls). In the original March 15, 1999, proposal, FDA had announced its tentative determination that classification into class II with four consensus standards as the special controls would provide reasonable assurance of the safety and effectiveness of the cutaneous oxygen monitor. The agency received no comments on the proposed reclassification of the cutaneous oxygen monitor. Under the SMDA authority, FDA is now proposing a guidance document as the special controls.

FDA is identifying the guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' that would serve as the special control for the cutaneous oxygen (PcO_2) monitor for both intended uses and for the cutaneous carbon dioxide ($PcCO_2$) monitor, if this proposal becomes final.

The draft guidance document sets forth the information FDA believes should be included in a 510(k) for these devices. FDA has identified the following as the risks to health presented by these devices (first column of the table below). The second column identifies the portions of the guidance document that address these risks to health. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the guidance document, or an acceptable alternative, is necessary to provide reasonable assurance of the safety and effectiveness of these devices.

TABLE 1.

Identified Risk	Recommended Mitigation Measures
Electrical Shock	Electrical Safety Standards
Electromagnetic Interference	Electromagnetic Compatibility Standards
Toxicity Tissue Reactivity	Biocompatibility and Sterility Guidance
Burns	Biocompatibility and Sterility Guidance
Inaccurate Measurement	Performance Testing Requirements

III. Special Controls

The proposed special control for these devices is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA.'' FDA is announcing the public availability of the draft guidance in a notice published elsewhere in this issue of the **Federal Register** and invites interested persons to comment.

IV. Proposed Dates

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that these classification actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act. Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers because most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposed rule by April 15, 2002. Submit two copies of any comments, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed rule and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 868 be amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2480 is amended by revising paragraph (b) to read as follows:

§ 868.2480 Cutaneous carbon dioxide ($PcCO_2$) monitor.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Final Guidance for Industry and FDA.''

3. Section 868.2500 is revised to read as follows:

§ 868.2500 Cutaneous oxygen (PcO_2) monitor.

(a) *Identification.* A cutaneous oxygen (PcO_2) monitor is a noninvasive, heated sensor (e.g., a Clark-type polargraphic electrode) placed on the patient's skin that is intended to monitor relative changes in the cutaneous oxygen tension.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA.''

Dated: January 29, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–3281 Filed 2–11–02; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 89

[Public Notice 3843]

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, as amended, the Department of State is issuing a proposed rule updating the list of countries whose laws regulations or practices prohibit crewmembers on U.S. ships from performing longshore work. Ships registered in or owned by nationals of the countries listed are ineligible for the reciprocity exception to the prohibition of longshore work by alien crewmembers in U.S. ports and waters.

DATES: Interested parties are invited to submit comments in triplicate by March 12, 2002.

ADDRESSES: Comments may be submitted to Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington, DC 20852–5816.

FOR FURTHER INFORMATION CONTACT: Stephen M. Miller, Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington DC 20852–5816; (202) 647–4915.

SUPPLEMENTARY INFORMATION: Section 258 of the Immigration and Nationality Act of 1952 (the ''Act''), 8 U.S.C. 1288, as added by the Immigration Act of 1990, Public Law 101–649, and subsequently amended, has the effect that alien crewmen may not perform longshore work in the United States. Longshore work is defined to include ''any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.'' The Act goes on, however, to define a number of exceptions to the general prohibition on such work.

Section 258(b)(2), entitled the ''Exception for safety and environmental protection,'' excludes from the definition of longshore work under this statute ''the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of Title 46 (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 4106 of the Oil Pollution Act of 1990, or sections 5103(b), 5104, 5106, 5107, or 5110 of Title 49 prescribed regulations which govern—(A) the handling or stowage of such cargo, (B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and (C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.''

Section 258(c), entitled the ''Prevailing practice exception,'' exempts particular activities of longshore work in and about a local port if there is a collective bargaining agreement covering at least 30 percent of the longshore workers in the area that permits the activities or if there is no such collective bargaining agreement and the employer of the alien crewmen files an appropriate attestation, in a timely fashion, that the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port. The attestation is required for activities consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel only if the Secretary of Labor finds, based on a preponderance of evidence which may be submitted by any interested party, that the performance of such particular activity by alien crewmen is not permitted under the prevailing practice in the area, is during a strike or lockout in the course of a labor dispute, or is intended or designed to influence an election of a bargaining representative for workers in the local port.

Section 258(d), the ''State of Alaska exception,'' provides detailed conditions under which alien crewmen may be allowed to perform longshore activities in Alaska, including the filing of an attestation with the Secretary of Labor at least 30 days before the performance of the work setting forth facts and evidence to show that the employer will make a bona fide request for U.S. longshore workers who are qualified and available, will employ all such workers made available who are needed, and has informed appropriate labor unions, stevedores, and dock operators of the attestation, and that the use of alien crewmembers is not intended or designed to influence an election of bargaining representatives.

Finally, Section 258(e), entitled the ''Reciprocity exception,'' allows the performance of activities constituting longshore work by alien crewmen aboard vessels flagged and owned in countries where such activities are permitted by crews aboard U.S. ships. The Secretary of State (hereinafter, ''the Secretary'') is directed to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crew member to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set forth in the Act.

The Department of State (hereinafter, ''the Department'') published such a list as a final rule on December 27, 1991 (56 FR 66970), corrected on January 14, 1992 (57 FR 1384). An updated list was initially published on December 13, 1993 (57 FR 65118), and was last published on June 13, 1996 (61 FR 29941).

The Department bases the list on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. On July 14, 2000, the Department sent instructions to U.S. Embassies and Consulates in countries, dependencies and other areas with seaports to determine whether crewmembers aboard U.S. vessels are prohibited from performing longshore work by law, regulation, or in practice in those countries. On the basis of the information received from the Embassies and Consulates, the Department is hereby issuing an amended list.

The list includes 24 new countries: Albania, Antigua, Barbados, Burnei, Chile, Cook Islands, Grenada, Kazakhstan, Latvia, Lebanon, Macau, Namibia, Nigeria, Oman, Russia, St. Christopher and Nevis, Singapore, Sudan, Syria, Tonga, Turkey, Tuvalu, United Arab Emirates and Vietnam. Two countries were dropped from the list because the most recent information indicates that they do not restrict longshore activities by crewmembers of U.S. vessels: Estonia and Micronesia.

Analysis of Comments

In a letter to the Secretary of State dated October 5, 2000 and through separate discussions, the International Longshore and Warehouse Union (hereinafter, ''ILWU'') has provided several comments based on the Department's updated list published on June 13, 1996 (69 FR 29941).

1. *Comment:* The ILWU believes that a country must be included on the list unless it is conclusively established by each seaport country that application of the reciprocity exception is warranted.

Reply: The Act directs the Department to maintain a list, of longshore work by particular activity, of countries where such activities are restricted by crewmembers aboard United States vessels. The reciprocity exception, by its terms, does not place the burden of proof on a particular party, including any seaport country, to establish that no restrictions on longshore activities exist. The Department has sought to compile a complete record of longshore law, regulation, and practice in all countries, states and other geographic entities with seaports.

2. *Comment:* The ILWU urges the Department to put all landlocked countries on the list, since the crews of U.S. vessels cannot do any longshore work in those countries.

Reply: The Department does not believe that it has excluded areas whose vessels are likely to call on U.S. ports and that have imposed restrictions on the longshore activities by crewmembers aboard U.S. vessels by law, regulation or practice. The Department does not believe that landlocked countries, which lack ports, restrict or in other ways govern, by law, regulation or practice, port activities. Interested parties are encouraged to provide the Department with information concerning any longshore rules, regulations, or practices that may exist in such landlocked areas.

3. *Comment:* The ILWU urges the Department to deny reciprocity to all countries with restrictive laws, regulations or practices, whether or not U.S. ships have called since January 1, 1996, and that the Department no longer request information about the calls of U.S. ships in foreign ports.

Reply: The Act instructs the Secretary of State to maintain a list of countries that restrict longshore activity by crewmembers aboard United States vessels. The Department believes that general restrictions by law, regulation or in practice on longshore activities by the crews of foreign vessels in the port of a third country would ordinarily apply equally to a U.S. vessel if a U.S. vessel were to call on the port of that country. The Department lists countries based on the existence of restrictions imposed by law, regulation or in practice irrespective of whether U.S. vessels have actually called at ports in the country in question and in future surveys will no longer ask whether a U.S. vessel has called on a foreign port.

4. *Comment:* The ILWU notes that the Department has not examined longshore policy in countries whose vessels are prohibited from calling at U.S. ports and believes that it would be preferable for the Department to make a determination as to these countries and to include them on the list where appropriate.

Reply: The Department is prepared to consider the situation with respect to such countries at the time their ships become eligible to enter U.S. waters, and revise the list as necessary.

5. *Comment:* The ILWU agrees with the Department's decision to seek information about International Labor Organization Convention 137 Concerning the Social Repercussions of New Methods of Cargo Handling in Docks (''ILO Convention 137''). The ILWU believes that the Convention by its terms plainly requires signatory countries, as a national policy, to preserve and promote existing longshore work for local dockworkers, and that these countries, as a consequence, prohibit or restrict foreign crewmembers from performing longshore activities. The ILWU therefore requests that the countries signatory to ILO Convention 137 be included on the reciprocity list.

Reply: In its most recent survey, the Department asked whether a country was a party to ILO Convention 137, and if so, whether that country restricted the longshore activities of foreign crewmembers in order to implement the Convention. Most countries party to Convention 137 replied that they did not restrict the longshore activities of foreign crewmembers as an implementation measure. The Department has listed those countries party to Convention 137 that have imposed restrictions on the longshore activities for foreign crewmembers.

6. *Comment:* In relation to the eligibility of Greece for the reciprocity exception, the ILWU expresses concern that the Department's treatment of Greece could imply that a blanket grant of reciprocity includes the right of an alien crewmember to perform longshore work ''on the docks.'' The ILWU takes the position that the reciprocity exception relates only to work ''on board'' vessels by foreign crewmembers.

Reply: The Department interprets the reciprocity exception to apply to all activities constituting longshore work, as defined by section 258(b) of the Immigration and Nationality Act:

* * * any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or coastal waters thereof.

The definition of longshore work does not restrict the scope of such activities to longshore work performed aboard a vessel and in fact, includes explicit reference to activities on the dock. Section 258(e) on the reciprocity exception does not contain a different, more limited definition.

7. *Comment:* The ILWU believes that Canada should be denied a reciprocity exception for all activities because, as its claims, Government of Canada regulations require employment validation for all work by foreign crewmembers that is not related to the operation of the ship. The ILWU contends that this requirement should result in the inclusion of Canada on the list, whether or not it is enforced for crewmembers aboard United States vessels.

Reply: The Government of Canada has advised the Department that pursuant to Canadian immigration regulations the requirement for employment authorization (work permit) does not apply to foreign nationals entering

Canada for the purpose of engaging in employment as a member of the crew of a ship of foreign ownership or registry engaged predominantly in the international transportation of goods or passengers. The Government of Canada notes that ship owners and operators may apply for a work permit if they are uncertain whether work performed by crewmembers is related to the operation of the ship, which requires for other than U.S. mariners the completion of an ''employment validation'' establishing that no Canadian residents are available to perform the work in question. The Government of Canada advises, however, that by virtue of Canadian immigration regulations crews of United States vessels are exempted from this employment validation requirement because of the reciprocity exception in U.S. law. In addition, owners and operators of U.S. ships report that the crews of their ships do in fact perform certain longshore activities in Canadian ports. The Department therefore does not believe that the requirement that foreign crewmembers obtain employment validation disqualifies Canada for a reciprocity exception because Canadian regulations specifically exempt crewmembers aboard United States vessels from the employment validation requirement. While the Department looks at the treatment of foreign vessels generally, Canada offers a clear example where national rules and regulations provide for treatment of foreign vessels that differs depending on the nationality of their crews.

8. *Comment:* The ILWU also expresses particular concern about the Department's decision to grant Canada a reciprocity exception for the ''operation of specialized self loading/unloading log carriers on the Pacific Coast.'' The ILWU believes that this finding is inconsistent with the decision of the U.S. Court of Appeals for the Ninth Circuit in *ILWU* v. *Meese*, 891 F.2d 1374 (9th Cir. 1989), that the immigration laws do not permit alien crewmen to perform this longshore activity in the United States.

Reply: The 1990 amendments to the Immigration and Nationality Act adding the reciprocity exception provides that for the purposes of 8 U.S.C. 1101(a)(15)(D)(i) (defining the class of nonimmigrant aliens to include ''alien crewman'') ''the term 'normal operation and service on board a vessel' does not include any activity that is longshore work (as defined in subsection (b) of [section 258 of the Act]), except as provided under subsection (c), (d), or (e)'' of section 258 of the Act. Section 258(e) provides that, subject to the determination of the Secretary of State pursuant to section 258(e)(2), the Attorney General shall permit an alien crew member to perform an activity constituting longshore work if two specific criteria are satisfied. Section 258(e)(2) directs the Secretary of State to compile and annually maintain a list, of ''longshore work'' by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. Section 258(b)(1) clearly defines the term ''longshore work'' to mean ''any activity relating to the loading and unloading of cargo, the operation of cargo-related equipment * * *'' The Department believes that the ''operation of specialized self loading/unloading log carriers on the Pacific Coast'' falls within the scope of this definition. The Department has also consulted extensively with U.S. diplomatic posts in Canada, U.S. carriers operating into Canada, union and industry officials and the Canadian Government. Two U.S. operators of specialized self-loading/unloading log carriers have confirmed that they are able to operate in Canadian Pacific ports and waters without restrictions on their U.S. crews and support the Department's determination that such activity is not prohibited by law, regulation or in practice in Canada.

9. *Comment:* The ILWU questions the Department's decision not to collect information about countries, dependencies, and other geographic entities with a population of less than 5,000 inhabitants.

Reply: The Department believes that this limit will capture all countries, dependencies, and other geographic entities whose vessels or whose nationals own vessels that are likely to call on U.S. ports . Interested parties are encouraged to provide the Department with information concerning longshore rules, regulations, or practices in areas not on the list.

10. *Comment:* The ILWU has asked the Department to scrutinize carefully the reports about China, Latvia, and Russia because crews on vessels from these countries have been doing longshore work that the ILWU believes should be reserved for U.S. longshore workers. The ILWU has provided the Department with information about Latvian law and regulations that the ILWU believes disqualifies Latvia for a reciprocity exception. According to the ILWU, any foreign worker, including crewmembers aboard U.S. vessels, paid in the territory of Latvia must have authorization from the Government of Latvia prior to performing any activity constituting longshore work.

Reply: The U.S. Embassy in Beijing reports that work and residence permits are required for any longshore activity by crewmembers on U.S. vessels calling on Chinese ports. Local agents must be used for loading and unloading cargo using gantry cranes, making fast and letting go the vessel, and husbanding cargo at port. The Department has therefore amended the listing for China to reflect these restrictions.

The Department asked the U.S. Embassy in Riga, Latvia to investigate the reports from the ILWU and to provide further information. According to the information supplied by the ILWU, the restrictions only apply to foreign workers who draw a salary from a Latvian company. Since the crewmembers of U.S. vessels are paid by U.S.-based owners or operators of the ships, the Latvian authorization requirement does not apply to the crews of U.S. vessels. The U.S. Embassy reports that Latvia does restrict longshore activities of foreign crews outside of their vessels. The Department has therefore added Latvia to the list to account for this restriction.

The U.S. Embassy in Moscow reports that collective bargaining agreements negotiated at the local level often give preference to local workers for longshore activities performed with the assistance of local port equipment. The Department has therefore amended the list for Russia to reflect these restrictions.

List of Subjects in 22 CFR Part 89

Longshore and harbor workers, Seamen.

For the reasons set out in the preamble, 22 CFR Chapter I is proposed to be amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

1. The authority citation for part 89 continues to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, 104 Stat. 4878.

2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Albania

(a) Cargo loading and discharge.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Algeria

(a) All longshore activities.
(b) Exception: Opening and closing of hatches.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Loading and discharge of cargo on board the ship if local labor is paid as if had done the work.

Antigua

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Argentina

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Australia (including Norfolk and Christmas Islands)

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Operation of cargo-related equipment and opening and closing of hatches in small ports where there is insufficient shore labor, and
(3) Rigging of ship's gear.

Bahamas

(a) Longshore activities on the pier.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo of less than 10 tons.

Belgium

(a) All longshore activities.
(b) Exception: Rigging of ship's gear.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Bermuda

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brazil

(a) Cargo handling.
(b) Operation of cargo-related equipment.
(c) Watchmen.
(d) Handling of mooring lines on the pier.
(e) Other longshore activities on the pier.
(f) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brunei

(a) All longshore activities.
(b) Exceptions: Longshore activities on board ship.

Bulgaria

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Mooring and line handling on board ship, and
(3) Loading and discharge of supplies for the crew's own needs, spare parts for small repairs and other non-commercial longshore activities.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized self-loading/unloading log carriers on the Pacific Coast,
(2) Operation of self-loading/unloading equipment and line handling by the crews of bulk vessels calling at private terminals,
(3) Opening and closing of hatches,
(4) Cleaning of holds and tanks,
(5) Loading of ship's stores,
(6) Operation of onboard rented equipment,
(7) Ballasting and deballasting, and
(8) Rigging of ship's gear.
(c) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the pier when the vessel is made fast or let go,
(2) Moving the vessel to place it under shoreside loading and unloading equipment,
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cap Verde

(a) All longshore activities.

Chile

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

China

(a) Longshore activities on shore.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, and
(2) Opening and closing of hatches.

Congo, Democratic Republic of

(a) All longshore activities.
(b) Exception: Operation of cargo-related equipment, when authorized by the Port Authority.

Cook Islands

(a) Longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Costa Rica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Cote d'Ivoire

(a) All longshore activities.

Croatia

(a) All longshore activities.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Dominica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Dominican Republic

(a) Local longshore workers get paid if crewmembers operate loading and unloading equipment.

Ecuador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,

(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Egypt

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the ship except to load and discharge cargo,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Handling of mooring lines on the ship.

El Salvador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment belonging to the vessel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Special operations requiring special expertise, provided that local port workers are paid.

Eritrea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Longshore activities for LASH vessels.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Operation of computerized off-loading equipment when local expertise is not available.

Finland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

France (including the French Antilles, French Guiana, French Polynesia, Mayotte, New Caledonia, Reunion, St. Pierre and Miquelon and Wallis and Fortuna)

(a) All longshore activities.
(b) Exceptions:
(1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Operation of cargo-related equipment to shift cargo internally,
(5) Handling operations connected with shipbuilding and refitting, and
(6) Offloading fish by the crew or personnel for the shipowner.

Gabon

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Gambia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Georgia

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greece

(a) Operation of shore-based equipment to load/unload a vessel.

Grenada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guatemala

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other activities with the prior approval of the port authority.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship except to load or discharge cargo,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Longshore activities in smaller harbors where there are no local port workers.

India

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities on pier or on land at port.

Israel

(a) All longshore activities.
(b) Exceptions, other than for loading or discharging cargoes to and from the pier:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Italy

(a) All longshore activities.
(b) Exceptions: Cargo loading, discharge and transfer upon presentation of the following information:
(1) Documentation listing the vessel's mechanical apparatus for cargo handling,
(2) A list of crewmembers who will perform the longshore activities, and
(3) An insurance policy guaranteeing recovery for damages to persons or property in relation to the longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of unusual hatches,
(2) Rigging of unusual ship's gear, and
(3) Longshore activities on foreign government vessels or ships engaged on a community development or humanitarian project.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kazakhstan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.
(b) Exceptions, when done in relation to ship safety, ship operation or supervisory

work to ensure that stevedoring is done correctly:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Kuwait

(a) Longshore activities on shore.

Latvia

(a) All longshore activities.
(b) Exceptions: activities on board the vessel.

Lebanon

(a) Longshore activities on shore.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) All longshore activities.

Macau

(a) Longshore activities on the pier.

Madagascar

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Malaysia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities on shore.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mauritania

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mauritius

(a) All longshore activities.
(b) Exceptions, other than for normal cargo handling activities:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mexico

(a) All longshore activities.
(b) Exception: Preparation of cargo handling equipment to be operated by local port workers.

Morocco

(a) Loading and discharge of merchandise.
(b) Rigging of ship from dockside.
(c) Other longshore activities not onboard vessel.
(d) Exceptions:
(1) Operation of onboard cargo related equipment, and
(2) Rigging of ship's gear onboard the ship, in coordination with local port workers.

Mozambique

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Namibia

(a) Longshore activities on shore.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Nauru

(a) All longshore activities.
(b) Exceptions, with the authorization of the Harbor Master:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities that take longer than 28 days of arriving in territorial waters.

Nicaragua

(a) All longshore activities.
(b) Exception: Opening and closing of hatches and rigging of ships gear if local workers are paid as if they had done the work.

Nigeria

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Instructing local employees on equipment.

Oman

(a) All longshore activities.
(b) Exceptions:
(1) Assisting in the operation of cargo related equipment if required,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Pakistan

(a) Longshore activities on shore.
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which pier workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Operation of sophisticated cargo-related equipment on container vessels,
(2) First opening and last closing of hatches and holds, and
(3) Cleaning of holds.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if not related to cargo handling,
(2) Rigging of ship's gear, if not related to cargo handling,
(3) Longshore activities for hazardous or polluting cargoes, and
(4) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores and Madeira)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel,
(9) Loading, discharge and disposal of merchandise in other boats, and
(10) Opening and closing hatches.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

Russia

(a) All longshore activities performed with local port equipment.
(b) Exceptions:
(1) Operation of cargo related equipment,

(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Christopher and Nevis

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Lucia

(a) Loading, discharge and handling of general cargo.
(b) Exceptions: activities on board the ship.

St. Vincent and the Grenadines

(a) All longshore activities.
(b) Exceptions: activities on board the ship.

Saudi Arabia

(a) All longshore activities on shore.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Sierra Leone

(a) All longshore activities.

Singapore

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore.
(b) Operation of cargo related equipment to load and discharge cargo.

Sweden

(a) All longshore activities.

Sudan

(a) All longshore activities.

Syria

(a) All longshore activities on shore.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches operated automatically, and
(2) Raising and lowering of ship's gear.

Tanzania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Thailand

(a) Longshore activities on shore.

Togo

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Tonga

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Trinidad and Tobago

(a) All longshore activities on shore.

Tunisia

(a) All longshore activities.
(b) Exception: Operation of specialized equipment that local port workers cannot operate.

Turkey

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Tuvalu

(a) Longshore activities on shore.

United Arab Emirates

(a) All longshore activities on shore.

Uruguay

(a) All longshore activities.
(b) Exceptions:
(1) Operation of on-board cranes requiring expert operation or at the master's request,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities on shore, at the discretion of the companies leasing and operating port facilities.

Vietnam

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo with on-board equipment when the port of call does not have the necessary equipment.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) Longshore activities on shore.

Dated: November 9, 2001.

E. Anthony Wayne,

Assistant Secretary, Bureau for Economic and Business Affairs.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Fixed and Floating Platforms and Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to March 27, 2002, the previous deadline of February 25, 2002, for submitting comments on the proposed rule published December 27, 2001 (66 FR 66851) that addresses fixed and floating offshore platforms and floating production systems (FPSs). These FPSs are variously described as column-stabilized units (CSUs); floating production, storage and offloading facilities (referred to by industry as ''FPSOs''); tension-leg platforms (TLPs); spars, etc. We are also incorporating into our regulations a body of industry standards pertaining to platforms and FPSs that will save the public the costs of developing separate and, in some cases, unnecessarily duplicative government standards.

DATES: We will consider all comments received by March 27, 2002, and we may not fully consider comments received after March 27, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia

20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Engineering and Operations Division, at (703) 787–1608.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subparts A, I, and J to incorporate by reference new documents governing fixed and floating platforms and new riser, stationkeeping, and pipeline technology. The request was based on the considerations that FPSs previously have not been directly addressed in 30 CFR 250 and that issues related to increasing the use of FPSs on the Outer Continental Shelf are complex. MMS agrees that more time is appropriate to ensure that all of the issues in this area are fully addressed.

Public Comments Procedures: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 17, 2002.

Paul E. Martin,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–3274 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010–AC94

Outer Continental Shelf Oil and Gas Leasing-Clarifying Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes clarifying amendments to regulations on Outer Continental Shelf (OCS) bidding systems. The proposed amendments make explicit that water depth and production timing on leases issued after 2000 and located in a field with leases issued earlier do not affect the way we determine the royalty suspension volume applicable to eligible leases on the field issued between 1996 and 2000.

DATES: We will consider all comments we receive by March 14, 2002. We will begin reviewing comments then and may not fully consider comments we receive after March 14, 2002.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments to the Department of the Interior, Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: *rules.comments®MMS.gov.* Reference OCS Oil and Gas Leasing—Clarifying Amendments in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: On February 23, 2001, we published final regulations on OCS Oil and Gas Leasing (66 FR 11512). This rule proposes clarifying amendments to those regulations. The proposed minor changes to the final regulations that are the subject of these clarifying amendments affect persons acquiring or holding deepwater oil and gas leases under 43 U.S.C. 1337(a). As published, the final regulations did not explicitly address the way we determine the royalty suspension volume for a field of both eligible and royalty suspension (RS) leases when first production in the field comes from an RS lease. Eligible leases are leases we issued with a royalty suspension during the period 1996 to 2000, while RS leases are leases we issued after the year 2000 with a royalty suspension. Without this correction, a lessee may be able to control production timing on the eligible lease so as to try to increase the field's royalty suspension volume above the levels set by Congress in the Deep Water Royalty Relief Act (DWRRA).

Our proposed clarification removes a half dozen restrictive words and adds a phrase to make explicit that water depth and production timing on an RS lease do not affect the way we determine the royalty suspension volume applicable to eligible leases in the same field. Specifically, we strike the phrase ''consisting only of eligible leases'' and add the phrase ''the water depths of eligible leases as in'' in § 260.114(d), prior to the reference therein to § 260.117(a), and by striking the word ''remaining'' in § 260.124(b)(1). By removing the word ''remaining'' we mean that all the production on an RS lease, not just that occurring after an eligible lease starts production (and, thereby, establishes the field's royalty volume) counts as part of the field's royalty suspension volume. Thus, the royalty suspension volume for a field is determined solely by the circumstances of the eligible leases that are assigned to the field when first production occurs from an eligible lease. Moreover, any royalty suspensions applied to RS or other leases in the field count against that field's applicable suspension volume.

For example, there are five eligible leases in a field and one RS lease. The RS lease has a royalty suspension volume of 10 million barrels of oil. The RS lease begins production first and goes through its royalty suspension volume. When an elgible lease begins to produce, the field has a royalty suspension volume of 87.5 million barrels. Because the RS lease has already taken its 10 million barrels of royalty suspension, the field now has a royalty suspension volume of 77.5 million barrels.

These clarifying amendments make this situation clear, so that there will be no reason to contest the suspension volume on the field.

Procedural Matters

Public Comment Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider any anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, jobs, the environment or other units of government. This action avoids confusion and possible conflict in the rare situation when a deepwater RS lease, that happens to be in a field with deepwater eligible leases, is the first lease to produce in the field. This event should be rare because the eligible leases pre-date the RS lease, meaning the eligible leases were deemed the better prospect and their owners have had more time to explore and develop their potential. Further, the royalty status only of production that occurs probably 10 or more years after start of production on the field would be affected by this rare event because of the large size of the field suspension volumes relative to annual production on typical leases. Finally, any royalty-free production shifted from the eligible leases to the RS lease on the one or two fields where this event may occur would total only about $20 to $30 million, only a portion of which would occur in any one year.

b. This rule will not create inconsistencies with other agencies' actions because there are no changes in requirements from the existing rule.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule will not raise novel legal or policy issues. This action protects the original intent of the DWRRA, should a rare and unlikely situation arise. We propose to handle this situation in a manner that is parallel to our established treatment of the same field when the normal situation of the eligible lease starting producing first occurs.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule will limit automatic royalty relief to deepwater fields to the amount established by the DWRRA, regardless of the water depth and production timing of RS leases on the field. New regulatory provisions will rarely apply and when they do will affect firms, large and small, the same way. Firm size should have no effect on whether RS or eligible leases on the same field start production first.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The proposed rule closes a possible loophole, the use of which may never be attempted. Even if a situation were to arise where this provision applies, the amount of royalties involved is a small fraction of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA)

The proposed revisions do not contain any information collection subject to the PRA and do not require a form OMB 83–I be submitted to OMB for review and approval under section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This proposal may affect the collection of royalty revenues from lessees in the deepwater Gulf of Mexico, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the deepwater royalty relief programs.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidders right to acquire OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. This clarification rule does not have a significant effect on energy supply, distribution, or use because it reduces uncertainty in a rare circumstance relating to the order of drilling of different vintages of leases on a deepwater field having royalty relief. Greater certainty about how a particular sequence of drilling affects both the field's and leases' applicable royalty suspension volumes serves to focus lessee effort towards solving development and production challenges rather than to contesting the ultimate size of an already generous royalty suspension volume awarded to them.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule describes the policies for OCS leases issued with different royalty suspension amounts that happen to be on the same field. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 260

Bidding system, Continental shelf, Oil and gas leasing, Reporting requirements, Restricted joint bidder, Royalty suspension.

Dated: January 30, 2002.

James E. Cason,

Acting Deputy Secretary.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 260 as follows:

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 260.114, paragraph (d) is revised to read as follows:

§ 260.114 How does MMS assign and monitor royalty suspension volumes for eligible leases?

* * * * *

(d) When production (other than test production) first occurs from any of the eligible leases in a field, we will determine what royalty suspension volume applies to the lease(s) in that field. We base the determination for eligible lease(s) on the royalty suspension volumes specified in paragraph (b) of this section and the water depths of eligible leases specified in § 260.117(a).

* * * * *

3. In § 260.124, paragraph (b)(1) is revised to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has an eligible or pre-Act lease?

* * * * *

(b) * * *

(1) Royalty-free production from your RS lease shares from and counts as part of any royalty suspension volume under § 260.114(d) for the field to which we assign your lease; and

* * * * *

[FR Doc. 02–3275 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 191–0315; FRL–7142–6]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Ventura County Air Pollution Control District (VCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 14, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
VCAPCD	74.20	Adhesives and Sealants	01/14/97	03/03/97
SCAQMD	1168	Adhesive and Sealant Applications	09/15/00	03/14/01

On August 12, 1997 and May 25, 2001, Rules 74.20 and 1168 were respectively found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of Rules 74.20 and 1168 into the SIP on July 18, 1996 and August 31, 1999, respectively. The VCAPCD and SCAQMD adopted revisions to the SIP-approved versions of Rules 74.20 and 1168 on January 14, 1997 and September 15, 2000, respectively. The CARB submitted Rules 74.20 and 1168 to us on March 3, 1997 and March 14, 2001, respectively.

C. What Is the Purpose of the Rule Revisions?

Amendments to these rules primarily revise definitions and VOC limits. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD and SCAQMD regulate ozone nonattainment areas (see 40 CFR 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The CARB's ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants,'' December 1998.

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying labeling requirements and rule language. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

Provisions of Rule 74.20 that conflict with section 110 and part D of the Act and prevent full approval of the SIP revision include:

1. The VOC limits in Sections B1–2 for certain adhesives and sealants do not meet RACT.

2. An inappropriate test method is cited in Section E3.

The provision of Rule 1168 that conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision is an exemption for light curable products.

D. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the VCAPCD and SCAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990 ...	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

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

C. Executive Order 13045

Executive Order 13045, entitled 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled 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 proposed 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.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: January 30, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–3347 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214b; FRL–7141–8]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area) includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. In a **Federal Register** notice published June 19, 2000, the Cincinnati-Hamilton area was redesignated to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) effective July 5, 2000. On September 11, 2001, the United States Court of Appeals for the 6th Circuit vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). Therefore, in response to the Court's findings, EPA is proposing to reinstate our redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the effective date of the original redesignation action. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action. In the Final Rules section of this **Federal Register**, EPA is taking this reinstatement action as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the reinstatement is set forth in the direct final rule. If no adverse comments relating to the reinstatement are received in response to this action, no further activity is contemplated. EPA does not intend to reconsider any comments that were, or could have been, presented regarding our original redesignation rulemaking. If EPA receives adverse comments related to the reinstatement, the direct final rulemaking 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 on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before March 14, 2002.

ADDRESSES: All comments should be addressed to: Raymond Gregory, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the Cabinet's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Scientist, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9116, (*gregory.ray@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: January 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–3356 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI15

Endangered and Threatened Wildlife and Plants; Listing Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to

list the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's tryonia (*Tryonia kosteri*), Pecos assiminea (*Assiminea pecos*), and Noel's amphipod (*Gammarus desperatus*) as endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). These species occur at sinkholes, springs, and associated spring runs and wetland habitats. They are found at two sites in Chaves County, NM, one site in Pecos County, TX, and one site in Reeves County, TX. Pecos assiminea is also known from one area in Coahuila, Mexico.

These three snails and one amphipod have an exceedingly limited distribution and are imperiled by local and regional groundwater depletion, surface and groundwater contamination, oil and gas extraction activities within the supporting aquifer and watershed, and direct loss of their habitat (e.g., through burning or removing marsh vegetation, cementing, or filling of habitat). This proposal, if made final, will implement the Federal protection and recovery provisions of the Act for these invertebrate species.

DATES: We will accept comments from all interested parties until April 15, 2002. Public hearing requests must be received by March 29, 2002.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, NM 87113. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office at the above address (telephone 505/346–2525; facsimile 505/346–2542).

SUPPLEMENTARY INFORMATION:

Background

Springsnails

The Permian Basin of the southwestern United States contains one of the largest carbonate (limestone) deposits in the world (New Mexico Department of Game and Fish (NMDGF) 1998). Within the Permian Basin of the Southwestern United States lies the Roswell Basin. Located in southeastern New Mexico, this Basin has a surface area of around 12,000 square miles and generally begins north of Roswell, NM, and runs to the southeast of Carlsbad, NM. The Roswell Basin contains two major aquifers; a deep artesian aquifer, and a shallow surficial aquifer. Water in the springs originates from both the deep aquifer and the shallow aquifer. Here, the action of water on soluble rocks (e.g., limestone and dolomite) has formed abundant ''karst'' features such as sinkholes, caverns, springs, and underground streams (White *et al.* 1995). These hydrogeological formations create unique settings harboring diverse assemblages of flora and fauna. The isolated limestone and gypsum springs, seeps, and wetlands located in and around Roswell, NM, and Pecos and Reeves Counties, TX, provide the last known habitats in the world for several endemic species of mollusks and crustaceans. These species include the Roswell springsnail and Koster's tryonia of the freshwater snail family Hydrobiidae, and Pecos assiminea of the snail family Assimineidae. These snails are distributed in isolated, geographically separate populations, and these species likely evolved from parent species that once enjoyed a wide distribution during wetter, cooler climates of the Pleistocene. Such divergence has been well-documented for aquatic and terrestrial macroinvertebrate groups within arid ecosystems of western North America (e.g., Taylor 1987; Metcalf and Smartt 1997; Bowman 1981; Cole 1985).

North American snails of the family Hydrobiidae inhabit a great diversity of aquatic systems from surface to cave habitats, small springs to large rivers, and high energy riffles to slack water pools (Wu *et al.* 1997). Snails of the family Assimineidae are typically found in coastal brackish waters or along tropical and temperate seacoasts worldwide (Taylor 1987). Inland species of the genus *Assiminea* are known from around the world, and in North America they occur in California (Death Valley National Monument), Utah, New Mexico, Texas (Pecos and Reeves Counties), and Mexico (Bolsón de Cuatro Cíenegas).

The Roswell springsnail, Koster's tryonia, and Pecos assiminea are all aquatic species. These snails have lifespans of 9 to 15 months and reproduce several times during the spring through fall breeding season (Taylor 1987; Pennak 1989; Brown 1991). Snails of the family Hydrobiidae are sexually dimorphic with females being characteristically larger and longer-lived than males. As with other snails in the family, the Roswell springsnail and Koster's tryonia are completely aquatic but can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limit. These two snails occupy spring heads and runs with variable water temperatures (10 to 20 °C) and slow to moderate water velocities over compact substrate ranging from deep organic silts to gypsum sands and gravel and compact substrate (NMDGF 1998). Conversely, the Pecos assiminea seldom occurs immersed in water, but prefers a humid microhabitat created by wet mud or beneath vegetation mats, typically within a few centimeters (cm) of running water.

Gastropods are a class of mollusks with a body divided into a foot and visceral mass and a head which usually bears eyes and tentacles. Like most gastropods, the Roswell springsnail, Koster's tryonia, and Pecos assiminea feed on algae, bacteria, and decaying organic material (NMDGF 1988). They will also incidentally ingest small invertebrates while grazing on algae and detritus (dead or partially decayed plant materials or animals).

These snails are fairly small; Koster's tryonia is the largest of the three snails, and is about 4 to 4.5 millimeters (mm) (0.16 to 0.18 inches (in)) long with a pale tan shell that is narrowly conical with up to 4¼ to 5¾ whorls or twists. The Roswell springsnail is 3 to 3.5 mm (0.12 to 0.14 in) long with a narrowly conical tan shell with up to 5 whorls. Pecos assiminea is the smallest of the three with a shell length of 1.55 to 1.87 mm (0.06 to 0.07 in) and a thin, nearly transparent chestnut-brown shell that is regularly conical with up to 4½ strongly incised (shouldered) whorls and a broad oval opening. Although their shells are similar, the Roswell springsnail is distinguished from Koster's tryonia by a dark, amber operculum (foot disk covering the animal when retracted into the shell) with white spiral streaks, while that of Koster's tryonia is nearly colorless. The genus *Assiminea* can be determined from other snail genera by an almost complete lack of tentacles, leaving the eyes within the tips of short eye stalks (Taylor 1987).

Taylor (1987) first described the Roswell springsnail from a ''seepage'' along the west side of an impoundment in Unit 7 at Bitter Lake National Wildlife Refuge (NWR or Refuge), Chaves County, NM. Since then, Mehlhop (1992, 1993) has documented the species on the Refuge and in March 1995 also found it in a spring on private land east of Roswell (P. Mehlhop, University of New Mexico, pers. comm. 1998). However, the current status of the Roswell springsnail at the spring on private land is unknown since further access has not been granted. Monitoring efforts at Bitter Lake NWR (1995–1998)

led to the discovery of Roswell springsnail populations in Bitter Creek, the Sago Springs Complex, and a drainage canal along the west shoreline of Unit 6. The Roswell springsnail is currently known only from Bitter Lake NWR with the core population in the Sago Springs Complex and Bitter Creek. The Sago Springs complex is approximately 0.3 km long (1,000 linear feet), half of which is subterranean with flow in the upper reaches restricted to sinkholes. Bitter Creek is six times longer than the Sago Springs Complex and has a total length of 1.8 kilometers (1.1 miles). Monthly monitoring and ecological studies of the Roswell springsnail initiated at Bitter Lake NWR in June 1995 (NMDGF 1998) are ongoing.

Roswell springsnail was formerly known from several other springs in the Roswell area, but these habitats have dried up apparently due to groundwater pumping (Cole 1981; Taylor 1983, 1987). Pleistocene fossils of the Roswell springsnail are known from Berrendo Creek and the Pecos River in Chaves County (Taylor 1987). No populations are currently known from these areas.

Taylor (1987) first reported Koster's tryonia from Sago Spring at Bitter Lake NWR, and another population was documented in 1995 at North Spring on private land east of Roswell. The species was formerly found at several other springs in the Roswell area, but these habitats have since dried up due to groundwater pumping (Cole 1981; Taylor 1983, 1987). Pleistocene fossils of Koster's tryonia are known from North Spring River and South Spring Creek in Chaves County (Taylor 1987). Monthly monitoring and ecological studies of Koster's tryonia initiated at Bitter Lake NWR in 1995 by the NMDGF indicate the species is most abundant in the deep organic substrates of Bitter Creek. It also occurs at the Sago Springs Complex, but in lower numbers. The current status of Koster's tryonia at the spring east of Roswell is unknown.

Pecos assiminea is presently known from two sites at Bitter Lake NWR, Chaves County, NM, from a large population at Diamond Y spring and its associated drainage, Pecos County, TX, and at East Sandia Spring, Reeves County, TX. Historically, Pecos assiminea occurred sporadically throughout the Bolsón de Cuatro Cíenegas, Coahuila, Mexico (Taylor 1987), but its present status there is unknown.

Monitoring and ecological studies of Pecos assiminea initiated at Bitter Lake NWR in 1995 showed the snail to be typically absent from substrate samples. Extant populations of Pecos assiminea occur sporadically along Bitter Creek, and a dense population was confirmed on moist vegetation and on muddy surfaces within 1 cm (.39 in) of water in 1999 in an emergent marsh plant community around the perimeter of a sinkhole within the Sago Springs Complex (NMDGF 1999).

Noel's amphipod

Noel's amphipod, in the family Gammaridae, is a small freshwater crustacean. Inland amphipods are sometimes referred to as freshwater shrimp. Noel's amphipod is brown-green in color with elongate, kidney-shaped eyes, and flanked with red bands along the thoracic and abdominal segments, often with a red dorsal stripe. Males are slightly larger than females, and individuals range from 8.5 to 14.8 mm (0.33 to 0.58 in) long (Cole 1981; 1985).

Amphipods of the family Gammaridae commonly inhabit shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Holsinger 1976, Pennak 1989). Because they are light-sensitive, these bottom-dwelling amphipods are active mostly at night and feed on algae, submergent vegetation, and decaying organic matter (Holsinger 1976, Pennak 1989). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991). Most amphipods complete their life cycle in one year and breed from February to October, depending on water temperature (Pennak 1978). Amphipods form breeding pairs that remain attached for 1 to 7 days at or near the substrate while continuing to feed and swim (Bousfield 1989). They can produce from 15 to 50 offspring, forming a ''brood.'' Most amphipods produce one brood but some species produce a series of broods during the breeding season (Pennak 1978).

Noel's amphipod is one of three species of endemic amphipods of the Pecos River Basin occurring from Roswell, NM, south to Fort Stockton, TX, known collectively as the Gammarus-pecos complex (Cole 1985). Noel's amphipod is currently known from only three sites at Bitter Lake NWR. These sites include the Sago Springs Complex, Bitter Creek, and along a drainage canal near impoundment 6 on the Refuge. Noel's amphipod was first described by Cole (1981) from a 1967 collection of amphipods taken from North Spring, east of Roswell. Based on morphological similarities, specimens collected from Lander Springbrook near Roswell were also identified as Noel's amphipod (Cole 1981). The amphipod was extirpated from Lander Springbrook between 1951 and 1960, and the North Spring population was lost between 1978 and 1988. Both incidences of extirpation were attributed to regional ground water depletions and habitat alterations (spring channelization) respectively (Cole 1981, 1988).

Previous Federal Actions

On November 22, 1985, we received a petition from Mr. Harold F. Olson, Director of the NMDGF, to add 11 species of New Mexican mollusks to the Federal list of endangered and threatened wildlife. Roswell springsnail (*Pyrgulopsis roswellensis* formerly *Fontelicella* sp. (Hershler 1994)), Koster's tryonia, and Pecos assiminea were among the 11 species. We determined the petition presented substantial information that the requested action may be warranted and published a positive 90-day petition finding in the **Federal Register** on August 20, 1986 (51 FR 29671). A subsequent 12-month finding published in the **Federal Register** on July 1, 1987 (52 FR 24485) concluded that the petitioned action was warranted but precluded by other higher priority listing actions. This proposed rule constitutes our 12-month recycled petition finding for the Roswell springsnail, Koster's tryonia, and Pecos assiminea. This proposed rule includes a proposal for Noel's amphipod, which has recently been made a candidate for listing since this species shares the same threats and management needs.

We identified the Noel's amphipod as a Category 2 species in our notices of review for animals published in the **Federal Register** on May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Before 1996, a Category 2 species was one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule. We discontinued designation of Category 2 species in the February 28, 1996, notice of review (61 FR 7956).

The springsnails were included as category 1 candidate species in our comprehensive invertebrate Notice of Review published in the **Federal Register** on May 22, 1984 (49 FR 21664). Category 1 candidate species were those for which we had on file substantial information on biological vulnerability and threats to support proposals to designate them as threatened or endangered. On November 21, 1991,

and November 15, 1994 (56 FR 58804, 59 FR 58982) we published revised lists of animals under review for threatened or endangered designation in the **Federal Register**. These notices retained Roswell springsnail, Koster's tryonia, and Pecos assiminea as category 1 candidate species. Subsequently, in the **Federal Register** Notices of Review on February 28, 1996, September 19, 1997, and October 25, 1999 (61 FR 7596, 62 FR 49398, 64 FR 57534), we ceased using category designations and classified these snails as candidate species. Candidate species are those for which we have sufficient information on biological vulnerability and threats to support proposals to designate them as threatened or endangered.

On August 29, 2001, the Service announced a settlement agreement in response to litigation by the Center for Biological Diversity, the Southern Appalachian Biodiversity Project, and the California Native Plant. Terms of the agreement require that we submit to the **Federal Register**, on or by February 6, 2002, a 12-month finding and accompanying proposed listing rule and proposed critical habitat designation for the four invertebrates addressed in this proposed rule. This agreement was entered by the court on October 2, 2001, (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be threatened or endangered due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are as follows.

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

These species are vulnerable to habitat degradation and local extinctions due to local and regional groundwater depletion (Hennighausen 1969, Quarles 1993, Jones and Balleau 1996); direct manipulation of flowing water and habitat conditions, such as damming or piping of water flow, pooling, or diverting flow (Cole 1981, NMDGF 1988); and surface and groundwater contamination from residential, agricultural, and industrial runoff (e.g., herbicides, pesticides) (Eisler 1987, Rail 1989). Like many aquatic invertebrates, the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are important ecological barometers of water quality because they are very sensitive to oxygen levels, water temperature, sediments, and contaminants (Quarles 1983, Eisler 1987, Arritt 1998, NMDGF 1998, 1999). Their presence often indicates a pristine spring or watercourse.

These four species depend upon water for their survival. Therefore, aquifer drawdown and contamination are among the most serious threats to these species. In order to assess the potential for water quality contamination, a study was completed in September 1999 to determine the sources of water for the springs at Bitter Lake NWR. This study (Balleau *et al.* 1999) reported that the source of water that will reach the Refuge springs over time periods ranging from 10 to 500 years includes a broad area beginning west of Roswell near Eightmile Draw, extending to the northeast to Salt Creek, and southeast to the Refuge. This broad area sits within a portion of the Roswell Basin and contains a mosaic of Federal, State, and private lands with multiple land uses including expanding urban development. Some of this development includes the installation of subsurface septic tanks, which can be a source of sewage contamination (McQuillan *et al.* 1989). Since this area delineates the ground water source area of surface water on the Refuge, it likewise represents pathways for contaminants to enter the species' habitat.

Contamination of ground water sources from industry and commercial operations in and around Roswell is well documented. For example, perchloroethylene (PCE) was discovered in the McGaffey and Main ground water plume in Roswell in 1994 (Environmental Protection Agency (EPA) 2001). It is suspected that a dry cleaning facility that operated from 1956 to 1963 is the source of the PCE. The New Mexico Environment Department subsequently detected PCE in 13 of 16 groundwater wells in a 1995 investigation (EPA 2001). This ground plume contamination was proposed for addition to the EPA's National Priority List on September 13, 2001 (66 FR 47612). This list assists the EPA in determining national priority sites that warrant further investigation of the nature and extent of environmental risks associated with the release of hazardous substances. It is not known whether this ground water plume will affect water quality on the Refuge or whether this contamination would impact these invertebrate species. However, portions of the shallow alluvial aquifer underlying Roswell are a source zone for many different contaminants that could eventually reach the Bitter Lakes spring complex (Balleau *et al.* 1999). We do not have specific documentation of adverse impacts associated with chronic or episodic chemical contaminant events to these species. However, such events have been implicated in similar aquatic organisms sharing common characteristics (e.g. Higgins' eye mussel (*Lampsilis higginsii*)) (Service 1999).

Any springsnails remaining at North Spring, which is surrounded by a golf course, are threatened by pesticide or herbicide use for landscaping or maintenance and springhead alteration, which includes piping, damming, or pooling spring outflow (NMDGF 1999). Populations of Roswell springsnail and Koster's tryonia at North Spring are reduced due to springhead modification (Landye 1981), regional groundwater depletion (Taylor 1987, NMDGF 1988), and recent observed reductions in springhead flow (Arritt 1998). The area of the historic Lander Springbrook (the first record of what was later identified as Noel's amphipod was discovered at Lander Springbrook) is believed to have existed near South Spring acres, where this historic spring joined the South Spring River. This area was visited in 1995 and found to be dry (William Radke, pers. comm. 2000). Given that the amphipod cannot survive outside of an aquatic environment, this population has likely been extirpated.

Oil drilling occurs throughout the Roswell Basin. This activity and associated actions can threaten the water quality of the aquifer on which these species depend. For example, oil and other contaminants from drilling activities throughout the basin could enter the aquifer supplying the springs inhabited by all four species when the limestone layers are pierced by drilling activities. There are at least 190 oil wells in the area surrounding Bitter Lake NWR that are potential sources of contamination. The total number of wells that could potentially contaminate the underground water supply that is the source of water on the Refuge has not been quantified. According to Go-Tech, which is a database of oil and gas development and exploration actions in New Mexico, currently 23 ''intentions to drill'' (pursuit of required permits has been initiated by an applicant) are under way for oil or natural gas on Federal lands in Chavez County, 16 on State lands and 7 on private land (Go-Tech 2001). The Bureau of Land Management (BLM) continually receives requests for oil and gas development on public lands immediately adjacent to the Refuge. In March 2000 there were at

least 36 oil wells in the immediate vicinity of the Refuge (New Mexico Bureau of Mines and Minerals 2000). To remediate (clean) the aquifer would be extremely difficult should it become contaminated by oil, chemicals, or organics like nitrates. In most cases contamination of an underground aquifer by agricultural, industrial, or domestic sources is treated at the source. When a contamination site is discovered, techniques are used to address the source of the contamination. Rarely do remediation efforts pump water from the aquifer and treat it before sending it back. This is largely because these techniques are very costly and difficult to apply (Sarah McGrath, New Mexico State Ground Water Bureau, pers. comm. 2001). Because these invertebrate species are sensitive to contaminants, efforts to clean up pollution source sites after the aquifer has been contaminated may not be sufficient to protect the aquatic habitat on which these species depend.

Operations associated with oil and gas drilling such as exploration, storage, transfer, and refining are also potential threats to these species (Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Green and Trett 1989; Service 1997). Such extractive processes and industry operations are known to deplete groundwater aquifers and to contaminate ground and surface waters (Hennighausen 1969; Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Richard 1988a, 1988b; Rail 1989; Richard and Boehm 1989a, 1989b; Jones and Balleau 1996; Martinez *et al.* 1998). This groundwater depletion and ground and surface water contamination can adversely impact aquatic mollusks (Eisler 1987, Havlik and Marking 1987, Green and Trett 1989), and threaten Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod populations at Bitter Lake NWR (USFWS 1997).

Oil and gas development along with the depletion of groundwater in the Pecos River valley also poses a threat to the population of Pecos assiminea at the Diamond Y Springs Complex. According to Veni (1991), over-pumping of the Pecos aquifer has dried other springs in the region, and the flow at Diamond Y spring is potentially threatened by groundwater withdrawal and contamination from agricultural and oil and gas industries within its drainage area. Reductions in endangered spring snail populations in other parts of the country due to reductions in water quality resulting from contamination by agricultural pesticides and herbicides are well documented (Frest and Johannes 1992, Mladenka 1992). There is evidence that colonies of Utah valvata (*Valvata utahensis*) and Bliss Rapids snail (*Taylorconcha serpenticola*) have recently declined or have been eliminated at several sites from changes in water quality due to agricultural and aquaculture wastewater originating outside the area (Frest and Johannes 1992). These two species are similar to the three snail species addressed in this proposal for listing, and as a result the three snail species could also be expected to experience adverse effects in response to environmental contaminants. Waste water from concentrated animal areas (i.e. dairies, feed lots, chicken farms), septic tanks, and agricultural uses is a known contributor of nitrates to surface and underground water sources. Nitrate levels in the underground aquifer near Roswell are known to be high. A significant source of the nitrates comes from surrounding dairy farms (Sarah McGrath, New Mexico State Ground Water bureau, pers. comm. 2001). The effects of nitrates on aquatic species are not entirely known because several outcomes may result from high level nitrate contamination in aquatic systems. One outcome includes increased growth of algae resulting from increased nutrients in the aquatic system. Too much algae in an aquatic environment could result in periods of low oxygen (resulting from increased respiration by algae) and in extreme cases this could be lethal to the snails and the amphipod. Also the type and amount of algae could change from more benign species to species which release phytotoxins into the environment and are lethal to some aquatic species. Elevated nutrient conditions favor blue-green algae which is a phytotoxin emitter. Should ammonia be a part of the pollution coming from industrial sites, agricultural areas, or domestic sources (i.e. septic tanks) this is a known acute toxin to aquatic life (Joel Lusk, USFWS, pers. comm., 2001). At least two dairy farms are currently required to do remediation for their contribution of nitrates to water pollution, both surface and underground (Sarah McGrath, New Mexico State Ground Water bureau, pers. comm. 2001). In addition, Diamond Y spring provides essential wetland habitat for several other rare and/or declining species such as the federally endangered Leon Springs pupfish (*Cyprinodon bovinus*) and federally threatened Pecos sunflower (*Helianthus paradoxus*).

East and West Sandia Springs are at the base of the Davis Mountains just east of Balmorhea, TX, and are part of the Balmorhea Spring Complex, the largest remaining desert spring system in Texas where the Pecos assiminea is found. West Sandia Spring has ceased flowing in recent times (Chris Perez, USFWS, pers. comm). East Sandia Spring discharges at an elevation of 977 meters (m) (3,224 feet (ft)) from alluvial sand and gravel, but the water is likely derived from Comanchean limestone underlying the alluvium (clay, silt, sand, and other similar material deposited by running water) (Brune 1981). Brune (1981) noted that flows from Sandia Springs were declining. According to Schuster (1997), the combined discharge of the Toyah basin springs from 1990 to 1996, which includes East Sandia Spring, shows an overall declining trend. The small flow from these springs is used by the local farming community for agricultural irrigation (Schuster 1997).

Finally, the range reduction trend in these snail species (e.g., by extirpation of once widely distributed but localized populations) is supported by the Pleistocene fossil record in conjunction with re-inventory of known site occurrences in which no individuals were detected (Noel 1954; Taylor 1987; Mehlhop 1992, 1993; NMDGF 1999). Fossil records indicate that at least one or more of these snail species were historically found at Berrendo Creek, North Spring, and South Spring Rivers and along the Pecos River (NMDGF 1999). This evidence suggests an apparent historical decline in the numbers, range, and distribution of these species.

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

We are unaware of threats to these four species from this factor. Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod may occasionally be collected as specimens for scientific study, but these uses probably have a negligible effect on total population numbers. All of these species are currently not known to be of commercial value, and overutilization has not been documented. However, as their rarity becomes known, they may become more attractive to collectors. Although scientific collecting is not presently identified as a threat, unregulated collecting by private and institutional collectors could pose a threat to these locally restricted populations. We are aware of overcollection being a potential threat with other snails (e.g., armored snail (*Pyrgulopsis* (*Marstonia*) *pachyta*)(65 FR 10033); Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) (58 FR

5938); and Socorro springsnail (Pyrgulopsis *neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) (56 FR 49646)), due to their rarity, restricted distribution, and generally well known locations. Due to the small number of localities for the snails and the amphipod, these species are vulnerable to unrestricted collection, vandalism, or other disturbance. There is no documentation of collection as a significant threat to any of the species. Therefore, we believe that collection of the animals is a minor but present threat.

C. Disease or Predation

Springsnails as well as amphipods provide a food source for other aquatic animals. Juvenile springsnails appear vulnerable to a variety of predators. Damselflies (Zygoptera) and dragonflies (Anisoptera) were observed feeding upon snails in the wild (Mladenka 1992). Mladenka (1992) observed guppies feeding upon snails in the laboratory. Disease is not a documented threat at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms are inadequate to protect the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. All four species are listed as New Mexico State endangered species, Group 1, which are those species ''* * * whose prospects of survival or recruitment within the State are in jeopardy.'' This designation provides the protection of the New Mexico Wildlife Conservation Act and prohibits the take of these species, except under issuance of a scientific collecting permit. However, New Mexico State statutes do not address habitat protection, indirect effects, or other threats to these species. State status as an endangered species conveys protection from collection or intentional harm. However, there is no formal consultation process to address the habitat requirements of the species or how a proposed action may affect the needs of the species. In Texas, Pecos assiminea currently has no State or other regulatory protection.

Members of these species that co-exist in springs with the endangered Pecos gambusia (*Gambusia nobilis*) at Bitter Lake NWR and Diamond Y Spring and the endangered Leon Springs pupfish at Diamond Y Spring may receive incidental habitat protection from the Endangered Species Act. However, possible habitat protection provided by the federally listed Pecos gambusia and the Leon Springs pupfish offers only partial protection for the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod because these federally listed fish are not found in all the springs the snails or amphipod inhabit. For example, Pecos assiminea does not normally occur directly within submerged habitats. It is most commonly found in moist soil or vegetation along the periphery of standing water. As a result, this habitat may not be afforded protection under current management actions or consultations which address conservation for listed fish species in the same area.

Federal water-rights for the Bitter Lake NWR were secured in 1996 (USDJ 1996). This acquisition should ensure minimum surface water discharge of Bitter Creek. However, if this water is contaminated, the Federal water right does not provide the required protection for these species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Since these species inhabit only a few sites, there is a high probability that human-caused or natural events could destroy a significant portion of their remaining populations and habitat. Prolonged drought, for instance, could adversely impact populations by reducing groundwater recharge while increasing salinity and contaminant concentrations (NMDGF 1998).

Fire, particularly during the winter months, will allow ash, sediment, salts and nutrients to more readily enter the aquatic habitat via precipitation and wind. Ash consists of carbon, soots, and other organic compounds that, upon entering the water column, provide a food source for bacteria and algae. With the addition of associated nutrients, and water temperature increases from the loss of streamside vegetation, populations of bacteria and algae will expand causing oxygen depletions. As a result, some invertebrates may perish in these situations, where they cannot escape the oxygen deficit. Additionally, denuded areas will allow erosion and sedimentation of the streamside habitat. Sedimentation could have the direct effect of smothering the invertebrates.

The Refuge is characterized by sinkhole/karst terrain. This terrain poses safety threats to fire crews and suppression equipment. As a result, fire suppression efforts are largely restricted to established roads. This severely limits management ability to quickly suppress fires that threaten fragile aquatic habitats on the refuge. On March 5, 2000, the Sandhill fire burned 405 hectares (ha) (1,000 acres (ac)) of the western portion of the refuge, including portions of Bitter Creek. Post-fire surveys indicated significant decreases in the invertebrate populations in Bitter Creek as well as decreases in dissolved oxygen levels (Brian Lang, NMDGF, pers. comm. 2000)

The Pecos assiminea may be threatened by competition for resources from the tropical red-rimmed melania snail (*Melanoides tuberculata*). This exotic snail is abundant at Diamond Y Spring and outcompetes native aquatic snails (Lisa Kiner, pers. comm. 1999).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining these species are vulnerable to extinction throughout all or a significant portion of their ranges. The habitat and range of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod are threatened with destruction, modification, and curtailment. Existing regulatory mechanisms do not provide adequate protection for these species, and other natural and manmade factors affect their continued existence. Because each of these four species has a very limited range, their populations are disjunct and isolated from each other, and potential habitat areas are isolated and separated by large areas of unsuitable habitat, these invertebrates are particularly vulnerable to localized extinction should their habitat be degraded or destroyed. Because their mobility is limited, populations will have little opportunity to leave degraded habitat areas in search of suitable habitat. As a result, one contamination event, or a short period of drawdown in the aquatic habitat where they are found could result in the loss of entire population areas, of which there are few. Therefore, we propose to list the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod as endangered. A threatened designation would not accurately reflect the population status, restricted distribution, vulnerability, and imminent threats.

General Critical Habitat Principles

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the

conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act, with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferencing on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under the section 7 adverse modification standard, designation of critical habitat does not provide prohibitions beyond those available from the listing of a species as endangered or threatened.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas. Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits. Critical habitat identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR part 424.12) state that critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. When we designate critical habitat at the time of listing we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat. Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We can exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction 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)).

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's 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. Information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature). Our final determination will be based on the best available scientific information and will take into consideration comments that we receive from peer reviewers and the public.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the geographical area designated is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Additionally, as described in the ''Available Conservation Measures'' section below, activities occurring within the larger supporting aquifer systems may also adversely modify the proposed critical habitat for these four invertebrate species. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy and adverse modification 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.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Prudency Determination

As mentioned above, section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation

of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the last few years, a series of court decisions have overturned our determinations that designation of critical habitat would not be prudent for a variety of species (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have examined the question of whether critical habitat for these four invertebrate species would be prudent.

Due to the small number of localities for the snails and the amphipod, these species are vulnerable to unrestricted collection, vandalism, or other disturbance. However, there is no documentation of collection as a significant threat to any of the species. Additionally, much of the habitat where the springsnails and amphipod occur is managed for the benefit of wildlife species where the threat of collection should be reduced. Consistent with recent case law, we must weigh the benefits in proposing to designate critical habitat for the snails and the amphipod against the harm which could be caused by disclosure of their location. We find that these benefits outweigh the risk of increased collection because the locations are already known and available to the public.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies consult with us to ensure that their proposed actions will not destroy or adversely modify critical habitat. While a critical habitat designation for these species in currently occupied habitat would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also have some educational or informational benefits. Therefore, we find that critical habitat is prudent for the three snails and the amphipod.

Although we make a detailed determination of the habitat needs of a listed species during the recovery planning process, the Act has no provision to delay designation of critical habitat until such time as a recovery plan is prepared. We reviewed the available information pertaining to habitat characteristics where these species had been recently located. This and other information represent the best scientific and commercial data available, and led us to conclude that the designation of critical habitat is both prudent and determinable for these four invertebrate species. Therefore, we propose to designate critical habitat pursuant to the Act for the springsnails and the amphipod.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we must consider those physical and biological features (primary constituent elements) essential to the conservation of the species. These primary constituent elements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species. The areas we are proposing to designate as critical habitat for the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod provide one or more of the primary constituent elements noted below.

We determined the specific primary constituent elements for Roswell springsnail, Koster's tryonia, and Noel's amphipod from data and studies on their general habitat and life history requirements including, but not limited to, Noel 1954; Cole 1981; Taylor 1987; Pennak 1978, 1989; and NMDGF 1996, 1998, and 1999. These primary constituent elements include permanent, flowing, unpolluted fresh to moderately saline water; slow to moderate velocities of water over substrates (a surface on which a plant or animal grows or is attached) ranging from deep organic silts to limestone cobble and gypsum substrates; presence of algae, submergent vegetation, and detritus in the substrata; water temperatures in the approximate range of 10 to 20 °C (50 to 68 °F) with natural diurnal and seasonal variation slightly above and below that range.

These three species are completely aquatic and require perennial, flowing water for all of their life stages. The aquatic environment provides foraging and sheltering habitat, as well as habitat structure necessary for reproduction and successful recruitment of offspring. Water is also the medium necessary to provide the algae, detritus, bacteria, and submergent vegetation on which all four species depend as a food resource. The necessary substrates, silts, cobbles, or gypsum, also provide habitat within the aquatic environment for these species to shelter, reproduce, and forage. Submergent vegetation contributes to the necessary nutrients, detritus, and bacteria on which these species forage. This vegetation also provides sheltering habitat.

We determined the primary constituent elements for Pecos assiminea from data and studies on its general habitat and life history requirements including, but not limited to, Taylor 1987; Pennak 1978, 1989; and NMDGF 1996, 1998, and 1999. These primary constituent elements include those noted above for the Roswell springsnail, Koster's tryonia, and Noel's amphipod and, in addition, moist soil at stream or spring run margins with vegetation growing in or adapted to an aquatic or very wet environment, such as salt grass or sedges. The margins of riparian systems that already contain the above necessary elements were included in this proposed designation because Pecos assiminea is found within the mesic (moist) environment directly adjacent to the aquatic habitat. Substrates found in these marginal areas provide for temperatures within the environmental tolerance for this species, and the habitat for sheltering, foraging, and reproduction that the Pecos assiminea requires.

Proposed Critical Habitat Designation

In proposing critical habitat for these species, we solicited information from knowledgeable biologists and recommendations contained in State wildlife resource reports (Balleau et al. 1999, NMDGF 1999, NMDGF 1998, Boghici 1997, Jones and Balleau 1996, and Cole 1985). We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for these species. The proposed critical habitat described below constitutes our best assessment of areas needed for the conservation of the three springsnails and Noel's amphipod and is based on the best available scientific and commercial information available. The proposed areas are essential to the conservation of the species because they are within the

geographical area occupied by these macroinvertebrate populations and because they currently have one or more constituent elements (see description of primary constituent elements, above).

Although these species are unique to only a few sites, important considerations in selection of areas proposed in this rule include factors specific to each geographic area or complex of areas, such as size, connectivity, and habitat diversity, as well as range-wide recovery considerations, such as genetic diversity and representation of all major portions of the species' historical ranges. The proposed critical habitat designation includes all known populations of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. Uncertainty of occurrence at other sites may result in small areas of occupied habitat not being included in the designation.

We are not including North Spring, Chaves County, NM, as critical habitat because it has been significantly modified by private land uses, it is surrounded by a golf course, and it is unlikely that these species still exist at this site. This site is also isolated from the springsnail populations in Bitter Creek and the Sago Springs Complex, which comprise the core populations of these species. Due to habitat modifications at North Spring, we do not know if the area provides for the essential life cycle needs of these species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)) and, therefore, we are not proposing to include it in the designation. We intend to work with land managers at North Spring to address important conservation needs of any remaining springsnails there.

We propose the following areas as critical habitat for these invertebrate species (see the ''Regulation Promulgation'' section of this proposed rule for exact boundary descriptions). These proposed critical habitat areas include primary constituent elements that provide for the physiological, behavioral, and ecological requirements essential for the conservation of Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod. The proposed designation includes two areas or ''complexes'' on Bitter Lake NWR, one complex at Diamond Y Spring, associated springs, and a segment of their drainages, and East Sandia Spring. A broad array of sinkholes and spring complexes provide a diversity of habitat types. We are proposing to include these areas in the critical habitat designation to maintain ecological distribution as well as adequate pathways necessary for genetic exchange, thereby fostering genetic diversity and population viability.

1. Sago/Bitter Creek Complex, Bitter Lake NWR, Chaves County, NM. Sago Springs, Bitter Creek, and the adjacent gypsum sinkholes comprise the core population center for all four species. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek and the Sago Springs complex. This designation is approximately 211 ha (521 ac).

2. Impoundment Complex, Bitter Lake NWR, Chaves County, NM. This complex includes portions of impoundments 3, 5, 6, 7, 15, and Hunter Marsh. This is a secondary population center for all four invertebrates with Koster's tryonia being the principal species there. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding the Refuge impoundments. This designation is approximately 245 ha (606 ac).

3. Diamond Y Springs Complex, Pecos County, TX. This area comprises a major population of Pecos assiminea. The proposed designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow, and portion of Leon Creek are also proposed for designation as these areas are considered habitat for the Pecos assiminea. This designation is approximately 153.8 ha (380 ac) of aquatic and neighboring mesic habitat.

4. East Sandia Spring, Reeves County, TX. This spring contains a population of Pecos assiminea. The proposed designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea. This designation is approximately 6.7 ha (16.5 ac) of aquatic and neighboring upland habitat.

Land Ownership

Most of the land included in the designation is within the administrative boundaries of the Bitter Lake NWR. However, within the designation are also private lands associated with the Diamond Y Spring Complex and East Sandia Spring. Both of these springs support populations of the Pecos assiminea. Diamond Y Spring is located in Pecos County, TX, and East Sandia Spring is located in Reeves County, TX. These private lands are managed as a nature preserve by The Nature Conservancy. Surrounding land uses include ranching and irrigated farming.

A general description of land ownership in each area follows.

1. Sago/Bitter Creek Complex-This complex occurs entirely on Bitter Lake NWR (Federal ownership).

2. Impoundment Complex-This complex occurs entirely on Bitter Lake NWR (Federal ownership).

3. Diamond Y Springs Complex-This complex occurs entirely on private lands. Private land in the immediate vicinity of the Diamond Y Springs Complex is managed as a nature preserve by The Nature Conservancy.

4. East Sandia Spring. The site is private land managed as a nature preserve by The Nature Conservancy.

The approximate Federal and private ownership within the boundaries of the critical habitat is shown in Table 1.

TABLE 1.—APPROXIMATE CRITICAL HABITAT BY LAND OWNERSHIP AND STATE IN HECTARES (ACRES)

	New Mexico	Texas	Total
Federal Land (National Wildlife Refuge).	456 ha (1,127 ac)	None	456 ha (1,127 ac).
Private Land	None	160.5 ha (396.5ac)	160.5 ha (396.5 ac).
Total			616.5 ha (1,523.5 ac).
Total critical habitat units			4.

Special Management Considerations and Protection

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. We use the following three criteria to determine if a plan provides adequate special management or protection: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, i.e., provide for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would no longer meet the definition of critical habitat.

Two proposed critical habitat sites are currently being managed by The Nature Conservancy (TNC). The Nature Conservancy currently has no formal management plans for these areas, but intends to have draft plans developed. If these plans are finalized prior to our final determination, we will consider whether they provide special management and we may exclude these areas if we determine that no additional special management is required.

Effect of Critical Habitat Designation

The designation of critical habitat directly affects Federal agencies. The Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat.

If a species is subsequently listed or critical habitat is designated, then 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 destroy or adversely modify its critical habitat. To that end, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated.

Section 4(b)(8) of the Act requires us to include in any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the springsnails and amphipod is appreciably reduced.

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 (see the next section, ''Available Conservation Measures,'' for a discussion of specific actions that may affect listed species or critical habitat). It is important to note that proposed critical habitat may also be adversely modified by certain activities occurring within the larger supporting aquifer systems. This would particularly include adverse impacts to the Roswell Basin aquifer for Bitter Lake NWR and Rustler aquifer (Boghici 1997) for Diamond Y Springs Complex. 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 for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat for these springsnails and the amphipod would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by these species. In those cases, critical habitat provides little additional protection to a species, and the existence of a critical habitat designation does not materially affect the outcome of consultation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed in part in the ''Effect of Critical Habitat Designation'' section below.

Federally supported actions that could affect the springsnails, amphipod, or their habitats include any activity that would significantly alter the source-water capture zones, subterreanean flows, or water level of the supporting aquifers; any activity that would significantly alter the water chemistry and physical parameters (e.g., temperature) in the wetland habitats and systems where these species occur;

and any activity that would introduce, spread, or augment non-native aquatic predators or competitors. This may generally involve groundwater pumping, water diversion, drainage alteration projects, wetland filling, road construction, construction of public and private facilities, chemical applications, oil and gas permitting activities, technical assistance programs, and wastewater or point-source discharge permits. Specific examples include, but are not limited to, EPA authorization of discharges under the National Pollutant Discharge Elimination System and registration of pesticides; Federal Highway Administration approval or funding of road or highway infrastructure and maintenance; BLM issuance of oil and gas leases or permits; U.S. Army Corps of Engineers authorization of discharges of dredged or fill material into waters of the United States under section 404 of the Clean Water Act; USDA-Natural Resources Conservation Service technical assistance and other programs; USDA-Rural Utilities Service infrastructure or development; Federal Energy Regulatory Commission permitting activities; and the Department of Housing and Urban Development's Small Cities Community Development Block Grant and home loan programs.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the U.S. Fish and Wildlife Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of this proposed listing on future and ongoing activities within the species' range. We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the publication in the **Federal Register** of the final regulation adding these species to the list of endangered species;

(2) Oil and gas exploration and drilling in areas where surface or groundwater is not connected to habitats occupied by the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod;

(3) Groundwater pumping or use of a supporting aquifer that would not result in a significant lowering of aquifer levels or reduced spring water discharges; and

(4) Domestic sewer hook-ups to city wastewater treatment systems within the groundwater recharge zones of the supporting aquifers.

Potential activities involving these species that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of these species for private possession or deposition in an institutional collection without the appropriate Federal permits;

(2) The use of chemical insecticides or herbicides in violation of the label directions which results in killing or injuring these species;

(3) The unauthorized release of biological control agents (e.g., insects) that attack any life stage of these species;

(4) Subsurface drilling or similar activities that contaminate or cause significant degradation of surface drainage water or aquifer water quality that supports the habitat occupied by these species;

(5) Groundwater pumping to the extent that a significant reduction in the quantity or quality of water in areas occupied by these species occurs;

(6) Septic tank placement where the groundwater is connected to sinkhole or other aquatic habitats occupied by these species;

(7) Activities occurring within the surface drainage zones that produce contaminated run-off (e.g., dumping waste products such as chemicals or oils on upland sites) during significant rain events; and

(8) Habitat modification such as removal of marsh emergent or perennial vegetation, construction, clearing, grading, digging, filling, blasting, and alteration of the natural drainages within or adjacent to the occupied wetland feature that results in killing or injuring these species by significantly impairing essential life-sustaining requirements such as breeding, feeding, and shelter.

If you have questions regarding whether specific activities will likely violate section 9, contact the New Mexico Ecological Services Field Office (see **ADDRESSES** section). For Pecos assiminea in Texas, contact the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, TX 78758, (512/490–0057). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103 (telephone 505/248–6920; facsimile 505/248–6788).

Economic Analysis

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 consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this proposal on the best available scientific information. We will use the economic analysis, and take into consideration all comments and information submitted during the comment period, to make a final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying an area as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in extinction of the species. We will conduct a robust economic analysis on the effects of the proposed critical habitat designation prior to a final determination that will comply with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et.al.* v. *U.S. Fish and Wildlife Service.* When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period at that time to accept comments on the economic analysis or further comment on the proposed rule.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to, ''clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.'' If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial Order also requires us to consult with tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. However, no known tribal activities could cause either direct or incidental take of the four species in this proposed rule, and no tribal lands or tribal trust resources are anticipated to be affected by the proposed designation of critical habitat.

Public Comments Solicited

The Service expects any final rule resulting from this proposal to be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) Additional information concerning the range, distribution, and population size of these species, including the locations of any additional populations of these species;

(3) Current or planned activities in the subject area and their possible impacts on these species;

(4) Reasons why any habitat should or should not be determined to be critical habitat for these species pursuant to section 4 of the Act; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register**, we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and our conclusions relating to the taxonomic, biological, and ecological information for the three snails and the amphipod. The purpose of such a review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the information presented in this proposed rule to list and designate critical habitat for the three springsnails and amphipod.

In making a final decision on this proposed rule, we will take into consideration the comments and any additional information we receive. The final rule may differ as a result of this process.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to New Mexico Ecological Services Field Office (see **DATES** and **ADDRESSES** sections).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the proposed designation of critical habitat in this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB). Under section 4(b)(1)(A) of the Act, the Secretary is to make listing proposals solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account any efforts being made to protect the species. Therefore, our analyses under E.O. 12866 and the Regulatory Flexibility Act pertain only to the proposed critical habitat portion of this rule, and not to the proposed listing. Under section 4(b)(2) of the Act, the Secretary is to designate critical habitat based on the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we believe that the proposed critical habitat designation will not have an annual economic effect of $100 million or more or 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.

(b) This proposed designation of critical habitat, if finalized, will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of listed species. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that will exist from a proposed or final listing of these four invertebrate species. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) We believe that this proposed designation of critical habitat, if finalized, 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, but will wait until completion of the economic analysis to fully evaluate expected effects.

(d) OMB has determined that the proposed designation of critical habitat for these species may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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 effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's proposed rule, we are certifying that the proposed designation of critical habitat will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The Small Business Administration (http://www.sba.gov/size) defines small entities to 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. 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. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if a rule designating critical habitat would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; private or State activities are not affected by the designation unless they have a Federal nexus. If the listing of these species is finalized, Federal agencies will be required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect Roswell springsnail, Koster's tryonia, Noel's amphipod or Pecos assiminea. If this proposed critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of these species that are proposed for listing, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Because these species have not been listed, there is no history of consultations. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the listing and critical habitat designation. The areas where critical habitat designations are being proposed are largely being managed for the benefit of wildlife. Projected land uses for the majority of the proposed critical habitat consists of habitat improvement projects (i.e., exotic weed control and prescribed burning), wildlife management, and recreational use (i.e., hunting, bird watching, and hiking).

On non-federal lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are most likely to occur on non-federal lands in the area encompassed by this proposed designation are recreation-related activities (i.e., hiking, trail construction, hunting, bird watching, and fishing). Oil and gas development and agricultural uses are also potential activities which could occur on private lands proposed as critical habitat in this designation. However, we do not expect the economic development of these lands through oil and gas or agricultural uses to be likely because these lands are currently owned by The Nature Conservancy and are managed as nature preserves to benefit wildlife and plant species. Land use outside of the proposed critical habitat designation that surrounds the Diamond Y Springs Complex is predominantly ranching and irrigated farming. We also do not expect the economic development of these

lands through agricultural uses to be likely because existing water rights are already established in this area and the use of chemical insecticides or herbicides carried out in accordance with the label directions would not result in a significant economic effect.

This proposed designation of critical habitat would not affect a substantial number of small entities currently involved in oil production. Prohibitions on oil and gas development or exploration are not anticipated. Conservation measures or stipulations to future permits and leases may be necessary to prevent contamination of water resources; however, these measures and stipulations should not result in significant economic hardship to a substantial number of small entities. We are not aware of a significant number of future activities that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities involved in oil production.

We also considered the likelihood that this proposed designation of critical habitat would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for small entities who are usually applicants for Federal permits. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for these springsnails and amphipod, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face. The kinds of actions that may be included in future reasonable and prudent alternatives include monitoring of water contamination and measures to prevent contamination, such as stipulations on permits to drill for natural gas or oil, control of exotic weeds in spring areas, and suspended or restricted use of pesticides or herbicides in areas occupied by and necessary to the survival and recovery of these species. Because recommended reasonable and prudent alternative measures must be economically feasible, these measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Many of the parcels within this designation are located in areas where likely future land uses would not be affected by designation of critical habitat. As discussed earlier, the private parcels within the proposed designation are currently being managed for the benefit of wildlife and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact due to the proposed designation of critical habitat—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for habitat improvement projects (i.e., invasive species control or prescribed burning), oil and gas development or exploration permitting, and activities which may result in the depletion of underground water sources or contamination of the underground aquifer. The proposed designation of critical habitat would result in project modifications only when proposed Federal activities, or non-Federal activities with a Federal nexus, would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the Roswell springsnail, Koster's tryonia, Noel's amphipod and Pecos assiminea will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed designation of critical habitat is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Prohibitions to carry out energy development or exploration are not anticipated as a result of this action either within the proposed designation or within the larger supporting aquifer systems. Based on our experience with section 7 consultations for all listed species, virtually all projects—including

those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for these springsnails and amphipod, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face. The kinds of actions that may be included in future reasonable and prudent alternatives for energy development include monitoring of water contamination and measures to prevent contamination. Stipulations on permits to drill for natural gas or oil and mineral leases may be necessary, in some circumstances, to protect aquatic habitat from contamination or degradation. However, these measures and stipulations should not result in significant negative impacts to energy supplies, distribution or use. Energy development within the proposed critical habitat designation is very unlikely given current land ownership. Future development and exploration beyond that which currently exists on the Refuge are also unlikely as no additional mineral leases are available that have not already been developed and/or abandoned. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) 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 these 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 the proposed listing and designation of critical habitat for these 4 species. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. A copy of this assessment is available by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposal with appropriate resource agencies in New Mexico and Texas (i.e., during the prior 90-day finding comment period and on an annual basis with the New Mexico Department of Game and Fish). We will continue to coordinate any future listing decisions or designation of critical habitat for the three springsnails and the amphipod with the appropriate Federal, State, and local agencies. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack Federal involvement. In areas occupied by the Roswell springsnail, Koster's tryonia, Noel's amphipod, and Pecos assiminea, Federal agencies funding, permitting, or implementing activities will be required, if these species are listed, through consultation with us under section 7 of the Act, to avoid jeopardizing their continued existence. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are specifically identified. While our making this definition and identification does not alter where and what federally sponsored activities may occur, these determinations 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 this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to list these four species and 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 the springsnails and the amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the springsnails,

pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

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), E.O. 13175, and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the four invertebrates. Therefore, we are not proposing to designate critical habitat for these species on Tribal lands. Additionally, the proposed designation does not contain any lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section) (telephone 505/346–2525).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) as follows:

a. Add Koster's tryonia snail, Pecos assiminea snail, and Roswell springsnail in alphabetical order under ''SNAILS''; and

b. Add Noel's amphipod under ''CRUSTACEANS'', to 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						
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Snail, Koster's tryonia	*Tryonia kosteri*	U.S.A. (NM)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
Snail, Pecos assiminea.	*Assiminea pecos*	U.S.A. (NM, TX), Mexico.	NA		E	17.95(f)	NA
*	*	*	*	*	*		*
Springsnail, Roswell	*Pyrgulopsis* (=*Fontelicella*) *roswellensis*.	U.S.A. (NM)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Amphipod, Noel's	*Gammarus desperatus*	U.S.A. (NM)	NA	E		17.95(h)	NA
*	*	*	*	*	*		*

3. Amend § 17.95 as follows:

a. In paragraph (f), add critical habitat for Koster's tryonia, Pecos assiminea, and Roswell springsnail; and

b. In paragraph (h), add critical habitat for Noel's amphipod, in the same alphabetical order as these species occur in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

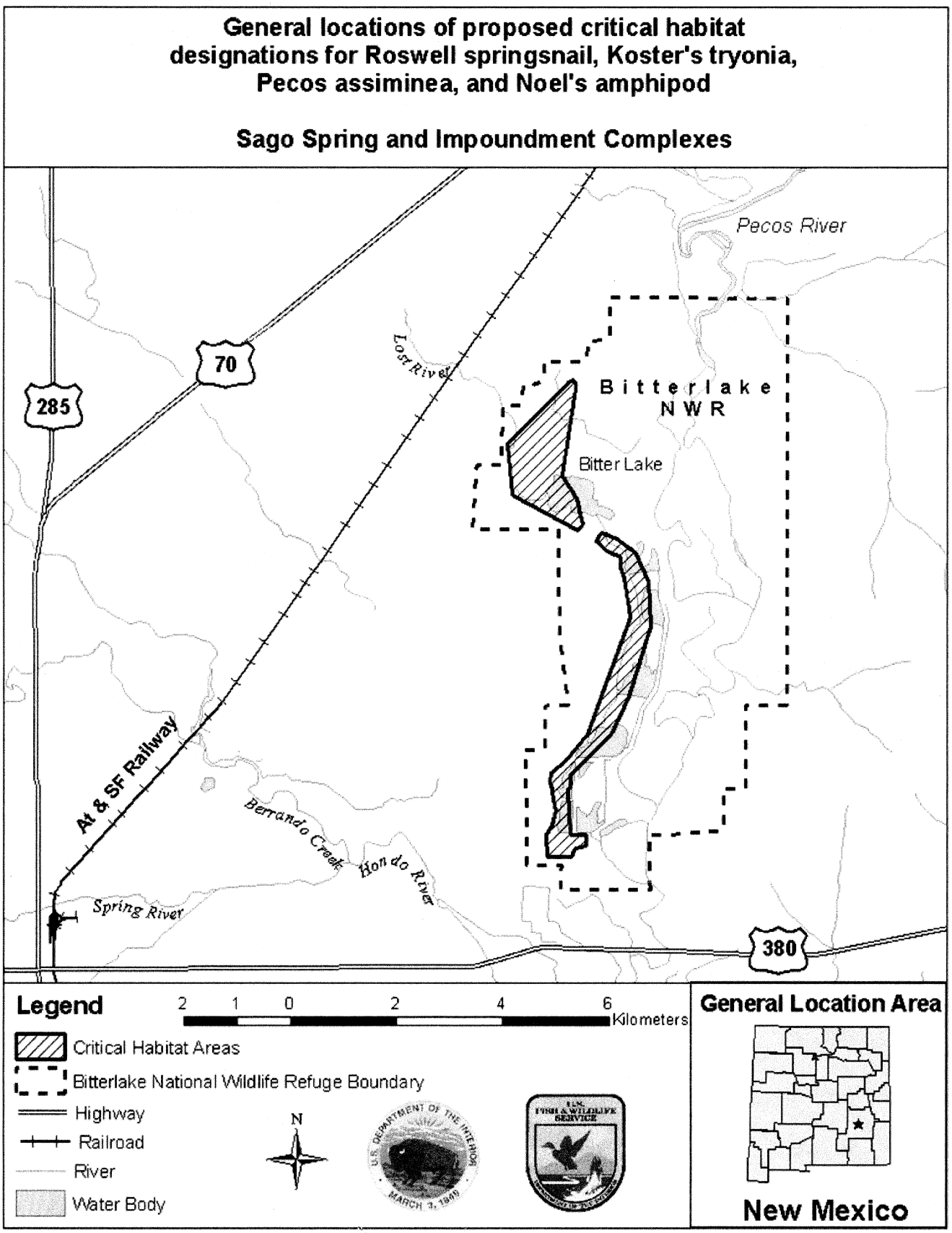
(f) *Clams and snails.*

* * * * *

Koster's tryonia (*Tryonia kosteri*)

1. Critical habitat is depicted for the Koster's tryonia in Chaves County, NM, at the Bitter Lake National Wildlife Refuge and Sago Springs, Bitter Creek, the adjacent gypsum sinkholes, portions of impoundments 3, 5, 6, 7, 15, and Hunter Marsh, on the map and as described below. The described proposed designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek, Refuge impoundments, and the Sago Springs complex. Legal description: USGS 7.5 minute quad-Bitter Lake, N.Mex., T10S, R25E, NW¼ NE¼, SE¼ NE¼, E½ SE¼ Section 9; E½ NE¼, SW¼ NE¼, W½ SE¼ Section 16; E ½ NW¼, SW¼ NW¼, NW¼ NE¼, N½ NW¼, N½ SW¼ Section 21; N½ SE¼ Section 20; E½ NE¼, NE¼ NE¼ Section 29; NW¼ SW¼. T9S, R25E, SE¼ NE¼, SE¼,

SE¼ SW¼ Section 32. T10S, R25E NE¼, E½ NW¼, N½ SE¼, SE¼ SE¼ Section 5, W½ SW¼.



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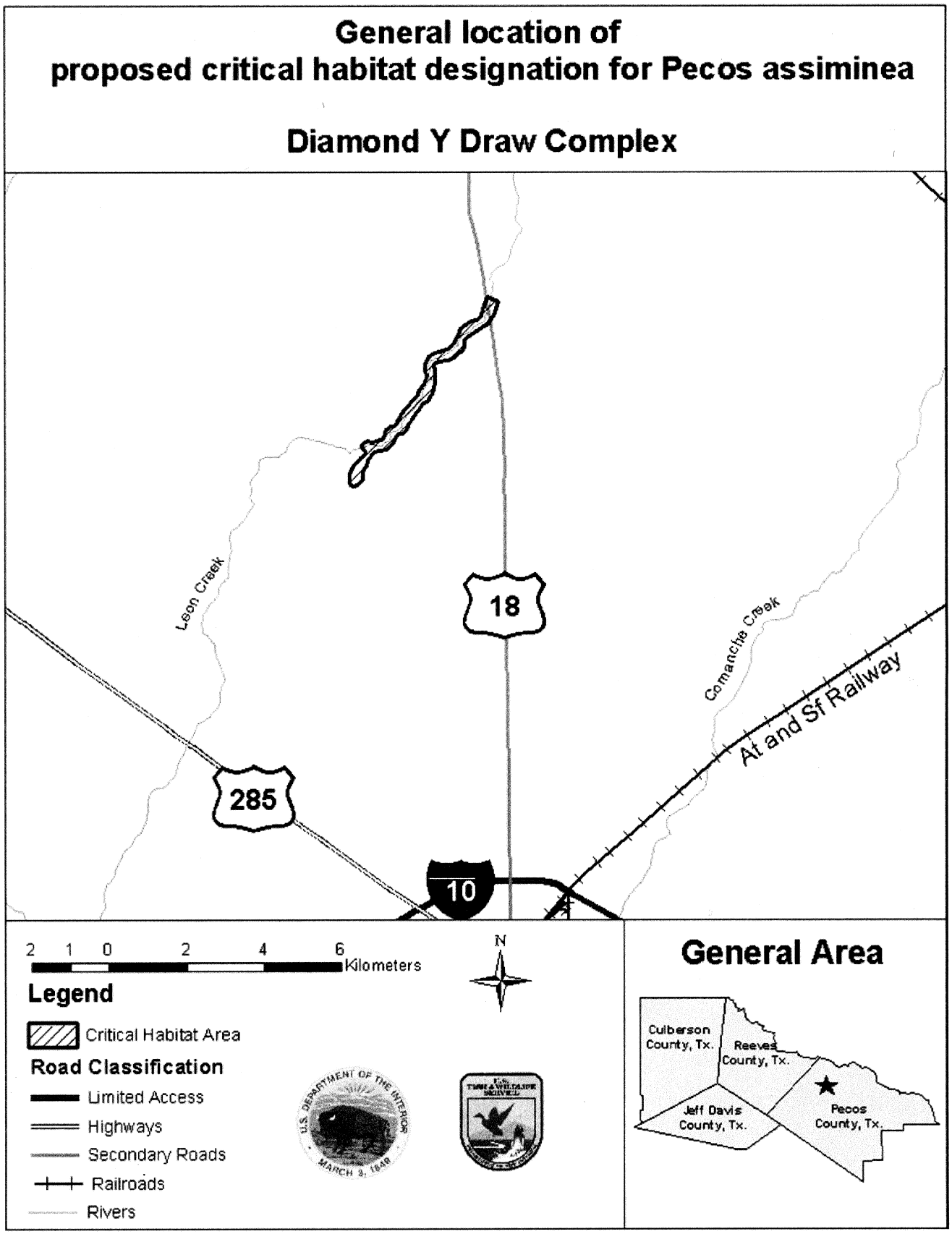
2. Within these areas, the primary constituent elements include permanent, flowing, unpolluted fresh to moderately saline water; slow to moderate velocities of water over substrates (a surface on which a plant or animal grows or is attached) ranging from deep organic silts to limestone cobble and gypsum substrates; presence of algae, submergent vegetation, and detritus in the substrata; water temperatures in the approximate range of 10–20 degrees Centigrade (50–68 degrees Fahrenheit) with natural diurnal and seasonal variation slightly above and below that range.

* * * * *

Pecos assiminea (*Assiminea pecos*)

1. A portion of the critical habitat for the Pecos assiminea is located in paragraph (f) of this section within the text for the Koster's tryonia. These species occur together, and critical habitat and the primary constituent elements are identical for these snails. In addition, critical habitat is depicted for the Pecos assiminea in Pecos County, TX, at the Diamond Y Springs complex. The proposed designation includes the Diamond Y Spring, which is located at UTM 13–698261 E, 3431372 N and approximately 6.8 km (4.2 mi) of its outflow ending at approximately UTM 13–701832 E, 3436112 N, about 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow and portion of Leon Creek are also proposed for designation as these areas are considered habitat for the Pecos assiminea. Critical habitat is also depicted for the Pecos assiminea in Reeves County, TX, at the East Sandia Spring complex. East Sandia Spring is located at UTM 13–698266 E, 3431347 N. The proposed designation includes the springhead itself, surrounding seeps and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea.



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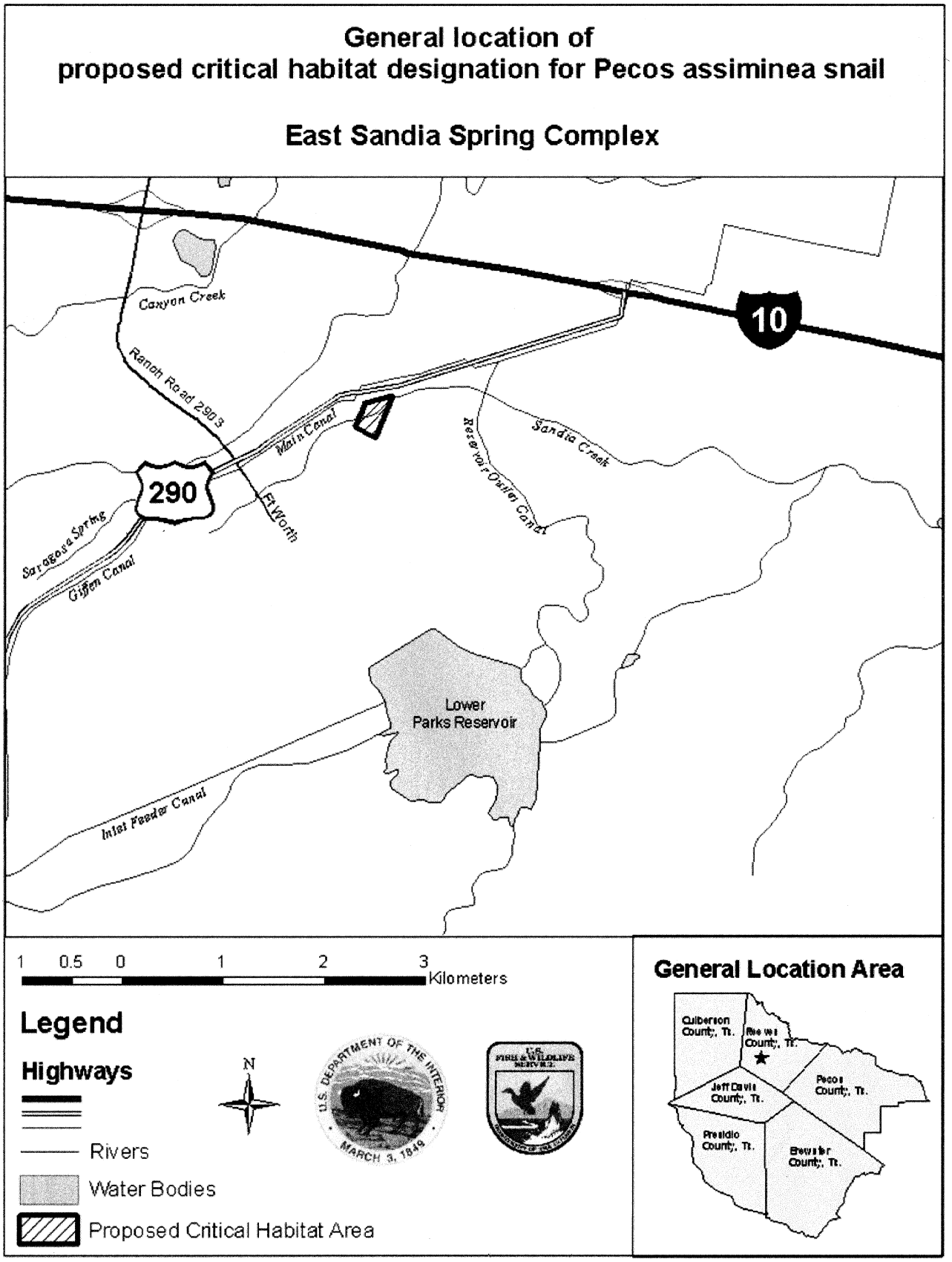

2. The primary constituent elements of critical habitat for Pecos assiminea are found in paragraph (f) of this section within the text for Koster's tryonia. In addition, Pecos assiminea requires moist soil at stream or

spring run margins with hydrophytic vegetation such as salt grass or sedges.

Roswell springsnail (*Pyrgulopsis roswellensis*)

The critical habitat map and description for the Roswell springsnail is located in paragraph (f) of this section within the text for the Koster's tryonia. These species occur together and critical habitat and the primary constituent elements are identical for these snails.

* * * * *

(h) *Crustaceans.*

* * * * *

Noel's amphipod (*Gammarus desperatus*)

The critical habitat map and description, including the primary constituent elements, for the Noel's amphipod is located in paragraph (f) of this section, within the text for the Koster's tryonia. These species occur together, and critical habitat and the primary constituent elements are identical for this snail and the Noel's amphipod.

Dated: January 29, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–3140 Filed 2–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020402B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day Council meeting on February 26 and 27, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday and Wednesday, February 26 and 27, 2002. The meeting will begin at 9:00 a.m. on Tuesday and 8:30 a.m. on Wednesday.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, February 26, 2002

Following introductions, the Council will consider final adoption of the Deep-Sea Red Crab Fishery Management Plan (FMP) documents, including a description of measures, draft regulations, and summary of impacts. The FMP contains measures to implement a controlled access program for the directed red crab fishery, a target total allowable catch level, days-at-sea limits, trip limits, and trap limits for vessels in the controlled access program. If adopted by the Council, the FMP will be forwarded to the Secretary of Commerce for consideration. The Skate Committee will ask for approval of the Draft Skate FMP and Draft Environmental Impact Statement, including the identification of preferred alternatives and a public hearing document. The discussion will include review and approval of the Habitat Committee's recommendations for the designation of skate Essential Fish Habitat.

Following these reports, the Council will discuss the possibility of future action concerning the scheduled annual review of the status of whiting stocks and the effectiveness of whiting management measures. These issues will be discussed in the context of the 2003 whiting default measures in the Northeast Multispecies FMP and whether action is necessary to revise those measures. The Council's Research Steering Committee will provide a brief update on its most recent activities. The Scallop Committee intends to ask for approval of additional management alternatives to be included in Draft Amendment 10 to the Atlantic Sea Scallop FMP and analyzed in the Draft Supplemental Environmental Impact Statement. Primary issues include alternatives to minimize bycatch and minimize adverse impacts on habitat in the sea scallop fishery. Prior to adjourning for the day, the Council will review and possibly approve a proposal to improve the enforceability of measures to address operator permit sanctions. The Council is considering endorsing an action that would hold fishing boat owners and operators responsible for individuals onboard vessels who are known by the owners or operators to have had their operator's permit suspended or revoked because of fishing violations.

Wednesday, February 27, 2002

The remainder of the Council meeting will focus on addressing issues associated with Amendment 13 to the Northeast Multispecies FMP. These include a review of events associated with recent litigation, a possible consideration and approval of groundfish status determination criteria for use in Amendment 13, the approval of Amendment 13 goals and objectives and the approval of Groundfish Committee recommendations for an amendment development process.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3488 Filed 2–8–02; 12:33 pm]

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Notices

Federal Register

Vol. 67, No. 29

Tuesday, February 12, 2002

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. 01–060–1]

Vector Tobacco; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Tobacco Genetically Engineered for Reduced Nicotine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Vector Tobacco (USA) Ltd., seeking a determination of nonregulated status for tobacco designated as Vector 21–41, which has been genetically engineered for reduced nicotine. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this tobacco presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–060–1, 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. 01–060–1. If you use 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. 01–060–1'' on the subject line.

You may read a copy of the petition for a determination of nonregulated status submitted by Vector Tobacco (USA) Ltd., the environmental assessment, and any comments we receive on this notice of availability 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology Assessments Section, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in Section 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of Section 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On May 1, 2001, APHIS received a petition (APHIS Petition No. 01–121–01p) from Vector Tobacco (USA) Ltd. (Vector), of Durham, NC, requesting a determination of nonregulated status under 7 CFR part 340 for tobacco (*Nicotiana tabacum* L.) designated as Vector 21–41, which has been genetically engineered to produce a very low level of nicotine. The Vector petition states that the subject tobacco should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, Vector 21–41 tobacco has been genetically engineered to express a quinolinic acid phosphoribosyltransferase (QPTase) in the reverse, or antisense position, which disrupts the normal expression of QPTase, a key enzyme in the biosynthetic pathway leading to the production of nicotine and related alkaloids. The effect of this genetic change is to reduce the nicotine levels of nicotine, nor-nicotine, and total alkaloids in the leaves of Vector 21–41 tobacco. The subject tobacco also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes the enzyme neomycin phosphotransferase type II (NPTII) and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens.* The *A. tumefaciens* method was used to transfer the added genes into the parental recipient Burley 21 LA tobacco variety.

Vector 21–41 tobacco has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from a plant pathogen. The subject tobacco has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of this tobacco, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not

present a risk of plant pest introduction or dissemination.

In Section 403 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

In accordance with the regulations in 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for Vector 21–41 tobacco. The EA was 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 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the EA and any comments received on these documents are available for public review, and copies of the petition and the EA may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Vector's reduced-nicotine Vector 21–41 tobacco and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of February 2002.

W. Ron Dehaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–3342 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Quality Incentive Program for Geographic Priority Areas, New Mexico

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, in New Mexico, gives notice that an environmental impact statement is not being prepared for:

Jicarilla Apache Nation (Rio Arriba and Sandoval Counties)

Pueblo of Jemez Tribal Trust Lands (Sandoval County)

Rio Brazos Watershed (Rio Arriba County)

Rincon-Mesilla Valley Irrigated Cropland (Dona Ana and Sierra Counties)

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III, State Conservationist; Natural Resources Conservation Service; 6200 Jefferson, NE; Albuquerque, NM 87109–3734; Telephone (505)761–4400.

Copies of these environmental assessments are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: http://www.nm.nrcs.usda.gov/techserv/ea.htm.

SUPPLEMENTARY INFORMATION: The environmental assessments of these federally assisted action indicates that the projects will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: January 31, 2002.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 02–3286 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 020702B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuary Permits.

Form Number(s): None.

OMB Approval Number: 0648–0141.

Type of Request: Regular submission.

Burden Hours: 1,018.

Number of Respondents: 336.

Average Hours Per Response: 1 hour for a general permit application; 15 minutes for a baitfish permit application; 13 hours for a historical resource permit application; 24 hours for a special use permit application; 1 hour for a notification of other agency permits or requests; 15 minutes for a permit amendment; 30 minutes for a request for certification of a pre-existing lease, license or permit; 15 minutes for an entry to a voluntary registry of activities; and 90 minutes for a appeal of an application rejection.

Needs and Uses: National Marine Sanctuary (NMS) regulations list specific activities that are prohibited in the sanctuaries. These otherwise-prohibited activities are permissible if a permit is issued by the NMS program. Persons wanting permits must submit applications, and persons obtaining permits must submit reports on the activity conducted under the permit.

The information is needed by NMS to protect and manage the sanctuaries.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit organizations, and State, Local, or Tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3377 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

[I.D. 020702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Game Fish Tagging Report.

Form Number(s): NOAA Form 88–162.

OMB Approval Number: 0648–0247.

Type of Request: Regular submission.

Burden Hours: 360.

Number of Respondents: 12,000.

Average Hours Per Response: 3 minutes.

Needs and Uses: A fish tagging program in the southeastern United States obtains information on fish growth and movement for use in stock assessments and fishery management activities. Persons who voluntarily tag fish, complete the tagging report to show where and when tagging took place and the type of fish tagged.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3378 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 020702D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0352.

Type of Request: Regular submission.

Burden Hours: 3,079.

Number of Respondents: 1,046.

Average Hours Per Response: 15 minutes per marking.

Needs and Uses: Regulations implementing the Pacific Coast Groundfish Fisheries Management Plan at 50 CFR 660.322(c)(3) specify that federally-permitted vessels are required to mark their fixed-gear with an identifying number. This number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third part disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: , 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3379 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Stephen Bailey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone: (202) 482–0182, 482–1102, respectively.

SUPPLEMENTARY INFORMATION:

THE APPLICABLE STATUTE

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to the regulations at 19 CFR part 351 (April 2000).

FINAL DETERMINATION

We determine that certain automotive replace glass windshields (''ARG windshields'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margin of sales is shown in the ''Final Margin'' section of this notice.

Case History

We published in the Federal Register the preliminary determination in this investigation on September 19, 2001. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 48233 (September 19, 2001) (''Preliminary Determination''). On October 4, 2001, we published in the Federal Register a postponement of the final determination in this investigation. See Notice of Postponement of Final Determination of Antidumping Duty Investigation: Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 50607 (October 4, 2001).

On September 21, 2001, the Department received timely filed allegations that we made ministerial errors in the preliminary determination from Fuyao Glass Industry Group Company, Ltd, (''FYG'') and PPG Industries, Inc., Safelite Glass Corporation, Apogee Enterprises, Inc., and its subsidiary Viracon/Curvelite, (collectively, ''Petitioners''). We published in the Federal Register the amended preliminary determination in this investigation on October 24, 2001. See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 53776 (October 24, 2002) (''Amended Preliminary Determination''). Since the publication of the Amended Preliminary Determination, the following events have occurred.

On October 18, 2001, Petitioners submitted a request for a public hearing in accordance with 19 CFR 351.310(c). On October 19, 2001, 2001, FYG submitted a request for a public hearing.

On November 4, 2001 through November 8, 2001, the Department conducted a sales and factors factor of production verification of FYG. On November 12, 2001 through November 16, 2001, the Department conducted sales and factors of production verification of Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''). On December 5, 2001 through December 6, 2001, the Department conducted a sales verification of FYG's U.S. affiliate, Greenville Glass Industries, Inc. (''GGI'').

On December 27, 2001, Petitioners, FYG, Xinyi, Benxun, and TCGI International, Inc. (''TCGI''), submitted their case briefs with respect to the sales and factors of production verification and the Department's Preliminary Determination. On December 27, 2001, Petitioners submitted their case brief with respect to the sales and factors of production verification and the Department's Preliminary Determination. On January 4, 2002, FYG submitted its rebuttal brief with respect to the Department's Preliminary Determination. On January 7, 2002, Petitioners, Xinyi, Benxun and TCGI submitted their rebuttal brief with respect to the sales and factors of production verification and the Department's Preliminary Determination. On January 7, 2002, Changchun Pilkington Safety Glass Company Limited, Guilin Pilkington Safety Glass Company Limited, Wuhan Yaohua Pilkington Safety Glass Company Limited and Shanghai Guangda Trading Company (''the Pilkington Companies'') submitted their rebuttal brief with regard to critical circumstances.

On January 8, 2002, the Department held a public hearing in accordance with 19 CFR 351.310(d)(1). Representatives for Petitioners, FYG, Xinyi, TCGI, and the Pilkington Companies were present. All parties present were allowed an opportunity to make affirmative presentations only on arguments included in that party's case briefs and were also allowed to make rebuttal presentations only on arguments included in that party's rebuttal brief. Also, on January 8, 2002, at Petitioner's request, the Department held a closed hearing, in accordance with 19 CFR 351.310(f), to permit the discussion of issues involving business proprietary information.

Period of Investigation

The period of investigation is July 1, 2000, through December 31, 2000.

Non-Market Economy

The Department has treated the PRC as a non market economy (NME) country in all its past antidumping investigations. See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China, 66 FR 58115 (November 20, 2001). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the Department's Preliminary Determination.

Separate Rates

In our Preliminary Determination, we found that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the Preliminary Determination which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that the respondents should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the Preliminary Determination.

The PRC-Wide Rate

For the reasons set forth in the Preliminary Determination, we continue to believe that use of adverse facts available for the PRC-wide rate is appropriate. See Preliminary Determination, 66 FR at 48237.

Surrogate Country

For purposes of the final determination, we find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Department's Preliminary Determination.

Critical Circumstances

In the Department's Preliminary Determination, we determined that critical circumstances exist for imports of ARG windshields from the PRC manufactured and/or exported by the PRC-wide entity. We, however, preliminarily found that critical circumstances do not exist for FYG, Xinyi, Benxun, TCGI, Changchun, Guilin, and Wuhan based on lack of importer knowledge. For this final determination, we continue to find critical circumstances for imports of ARG windshields from the PRC manufactured and/or exported by the PRC-wide entity. Additionally, because the final calculated margin for FYG is

below 15 percent, the Department's threshold for imputing knowledge of dumping for CEP sales is not met. For Xinyi because the final calculated margin for is below 25 percent, the Department's threshold for imputing knowledge of dumping for EP sales is not met. We therefore do not find critical circumstances with respect to these companies. Furthermore, the weighted-average margin we calculated for the non-mandatory respondents Benxun, TCGI, Changchun, Guilin and Wuhan, is less than either the 25 percent threshold for imputing knowledge for EP sales or the 15 percent threshold for CEP sales. Although the record as to these respondents does not indicate whether their sales were EP or CEP, neither threshold is met. See Notice of Final Determination of Sales at Less Than Fair: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000). Therefore, we do not consider critical circumstances to exist with regard to these non-mandatory respondents. For a discussion of interested party comments on this issue, see Issues and Decision Memorandum for the Less Than Fair Value Investigation of Certain Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 1, 2002 (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room B–099 of the Main Department of Commerce Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the World Wide Web at www.ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding and have surrogate value changes. See Analysis Memorandum Xinyi, Analysis Memorandum for FYG, and Factors of Production Valuation Memorandum for the Final Determination, dated February 1, 2002.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the Preliminary Determination as a result of verification, see Analysis Memorandum for Xinyi and Analysis Memo for FYG.

Scope of Investigation

Interested parties requested that the Department clarify whether ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. Based on the information received, we clarified that ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. For further discussion, please see the Issues and Decision Memorandum for the Scope Clarification for the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Edward C. Yang, Director, Office 9 to Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, dated January 24, 2002.

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouses, for consumption on or after the date of publication of the Amended Preliminary Determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Weighted–average margin (percent)
FYG	9.67
Xinyi	3.70
Benxun	8.22
Changchun	8.22
Guilin	8.22
Wuhan	8.22
TCGI	8.22
China–Wide	124.50

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

February 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

Discussion of the Issues

Petitioners' Issues

Comment 1: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Korea may be Subsidized

Comment 2: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Thailand may be Subsidized

Comment 3: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Korea and Thailand may be Dumped

Comment 4: Whether Xinyi's Prices for Imports of Float Glass From India May be Subsidized

Comment 5: Whether Chinese Prices for Indonesian Float Glass May Be Subsidized and/or Dumped

Comment 6: Whether the Department Should Continue to Use Indian Import Statistics as the Surrogate Value for Float Glass

Comment 7: Whether the Department Should Use as its Surrogate Value the Electricity rate Paid by the Indian Auto Glass Producers

Comment 8: Whether the Department Should Use Actual Molding Prices and Mirror Brackets/Button Prices as the Surrogate Value for Xinyi's Moldings and Mirror Brackets/Buttons

Comment 9: Whether the Department Should Use the Updated Surrogate Value Information Provided by Petitioners for Certain Inputs and Also Use a More Appropriate HTS Number for Scrap Iron Input

Comment 10: Whether the Department Should Calculate Factory Overhead, Selling, General and Administrative Expenses, and Profit in Accordance with Petitioners Proposed Methodology

Comment 11: Whether the Department Should Value the Labor Factor of Production on the Basis of Fully-Loaded Labor Costs

Comment 12: Whether Xinyi's Market Economy Based Inland Freight Expenses Are Controlled by the Chinese Government

Comment 13: Whether the Department Should Make Certain Adjustments to Freight for FYG

Comment 14: Whether Respondents Reported Usage Rates for Float Glass and PVB Are Understated

Comment 15: Whether Respondents Reported U.S. Selling Prices are Reliable

Comment 16: Critical Circumstances

Comment 17: Whether the Scope Includes ARG Windshields for Buses, Recreational Vehicles and Farm Machinery

Comment 18: Whether the Department Used Incorrect Inflation Figures

Company Specific Issues

FYG's Comments

Comment 19: Whether the Department Should Use the Remaining Average Float Glass Costs Specific to the Thickness and Type Required for the CONNUM

Comment 20: Whether the Department Should Calculate the Profit Ratio Based on the 1999–2000 Financial Report of Asahi India Safety Glass Ltd.

Comment 21: Whether the Net Profit Ratio Should be Based on a Simple Average of the Financial Results of Saint-Gobain Sekurit and Asahi

Comment 22: Whether the Asahi India Profit Ratio Contains a Clerical Error

Comment 23: Whether the Department's Calculation of the Factory Overhead Ratio Should Exclude the Cost of Stores and Spare Parts

Comment 24: Whether the Department's Calculation of the SG&A Expense Ratio Contains Errors

Comment 25: Whether Water as Part of Energy in the Cost of Manufacturing Results in Double-Counting

Comment 26: Whether the Department Should Value Water Using the Asian Development Bank Data

Comment 27: Whether the Department Erred in Including U.S. Duty and International Freight Charges Among the CEP Selling Expenses

Comment 28: Whether the Department Double-Counted Molding

Comment 29: Updated Labor Rate for 1999

Comment 30: Surrogate Value for Styrofoam

Comment 31: Whether the Department Should Remove International Freight and Insurance Costs from Indian Surrogate Values

Xinyi's Comments

Comment 32: Whether Market Economy Expenditures Should be Used in Place of Surrogate Values

Comment 33: Verification Issues

Comment 34: Whether Negative Margins Should be Taken into Consideration in Calculating Certain Overall Weighted Average Margins

Comment 35: Whether the Department Should Calculate a Margin for Non-Mandatory Respondent Benxun Based on Its Data

Comment 36: Whether Recent Changes to the Antidumping Statute have Transformed the Law into a Penal Statute, thereby Violating Certain Respondent Parties' Procedural Due Process Rights

[FR Doc. 02–3383 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–860]

Notice of Initiation of Antidumping Duty Investigation: Pneumatic Directional Control Valves from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigation.

EFFECTIVE DATE: February 12, 2002

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Frank Thomson at (202) 482–3836 or (202) 482–4793, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On January 14, 2002, the Department received a petition filed in proper form by the Pneumatics Group (''the petitioners''), consisting of the following parties: Festo Corporation[1], IMI Norgren, Inc., Numatics, Inc., and Parker Hannifan Corporation. The

[1] Produces pneumatic fluid power products, but not pneumatic directional control valves (''PDCVs''), in the United States

Department received information supplementing the petition on January 30, 2002 and January 31, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of PDCVs from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are an interested party, as defined in sections 771(9)(E) and 771(9)(F) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. (See the Determination of Industry Support for the Petition section below.)

Scope of Investigation

The scope of the investigation includes all pneumatic directional control valves, whether assembled or unassembled, regardless of size, configuration, intended or actual use, method of actuation, and material(s) employed in construction, other than aerospace–type fluid power valves as further described below. The subject merchandise thus includes, but is not necessarily limited to, manual, mechanical, air–operated, and solenoid type pneumatic directional control valves.

Specifically excluded from the scope are aerospace–type pneumatic fluid power valves, defined as pneumatic fluid power valves that have been certified for use in airframes, aircraft engines, or other aerospace applications pursuant to standards established or required by the Federal Aviation Administration or Department of Defense in the United States, or by the counterparts of these agencies in other countries.

The subject merchandise is currently classified under subheadings 8481.20.0060 and 8481.20.0070 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Aerospace–type fluid power valves, which are excluded from the scope, are not entered under the subheadings just described, but are instead entered under various other subheadings.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers PDCVs as defined in the Scope of the Investigation section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

On January 25, 2002, the Department received comments regarding industry support from the Japan Fluid Power Association (a majority of whose members, including SMC Corporation, are producers in Japan of PDCVs). On January 29, 2002 and February 1, 2002, the Department received comments regarding industry support from SMC Corporation, a Japanese producer of PDCVs and SMC Corporation of America, a U.S. importer of the subject merchandise (collectively, ''SMC Corporation'').

The Department has reviewed the comments of both the Japan Fluid Power Association and SMC Corporation. In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition and amendments thereto, and Department research. See the Industry Support Attachment to the Import Administration AD Investigation Checklist, dated February 4, 2002 (''Initiation Checklist'') (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) for further description.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition and its supplements, and information gathered through Department research demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who

[2] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) and section 732(c)(4)(D) are met. See Initiation Checklist. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. See Initiation Checklist. Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist.

Period of Investigation

The anticipated period of investigation (''POI'') is January 1, 2001, through December 31, 2001.

Constructed Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the Initiation Checklist.

The Department has analyzed the information in the petition and considers the country–wide import statistics for the anticipated POI and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will re–examine the information and may revise the margin calculation, if appropriate.

Constructed Export Price

The petitioners identified one company that they believe accounts for a substantial majority of imports of subject merchandise from Japan. The petitioners state that this producer sells subject merchandise through its U.S. affiliate. The petitioners based constructed export price (''CEP'') on the affiliate's price list. The list prices include all import charges and duties, but do not include U.S. inland transportation. To arrive at a net–price, the petitioners deducted from the list price an amount for SMC Corporation of America's (''SMC–USA's'') standard–discount. To arrive at ex–factory price, petitioners deducted import charges based on the average import charge reported in U.S. import statistics for entries of the subject merchandise during the last four quarters for which data are available (2000Q4 – 2001Q3). Petitioners made a further deduction for import duties and a deduction to account for SMC–USA's U.S. selling expenses. Petitioners based U.S. selling expenses on the aggregate selling expense ratio experienced by the PDCV–producing members of the Pneumatics Group during the year 2000.[3] The petitioners stated that SMC–USA's selling expense ratio is not publicly available and cannot reasonably be estimated by other publicly available means. Therefore, the petitioners calculated a net U.S. price by subtracting import charges and duties, and U.S. selling expenses. The petitioners provided a publically available selling expense ratio in their January 30, 2002, amendment to the petition. However, because the non–public selling expense ratio provided in the original petition is more conservative, we have continued to use the ratio that was provided in the original petition.

Normal Value

With respect to normal value (''NV''), the petitioners provided home market prices that were obtained from a party in Japan for PDCVs that are comparable to the products exported to the United States which serve as the basis for CEP. Petitioners applied relevant discounts to the yen–denominated price and then converted the net price to U.S. dollars by using exchange rates applicable to the twelve–month period preceding the petition, as published by the Federal Reserve Board. Petitioners did not deduct inland freight from the sales value.

Based on the comparison of CEP to NV, petitioners calculated estimated dumping margins from 9.28 to 107.46 percent. Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing CEP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

[3] The PDCV–producing members of the Pneumatics Group are not publically held companies, therefore it was necessary to aggregate and average these three companies' selling expenses to derive an appropriate ratio.

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioners used in their calculations of U.S. and home market prices and has found that it represents information reasonably available to petitioners supporting the allegation of dumping (see Initiation Checklist).

Based on the data provided by the petitioners, there is reason to believe that imports of PDCVs from Japan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the decline of U.S. producers' output, sales, market share, profits, productivity, return on investment, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petition and have determined that the petition alleges the elements necessary for the imposition of a duty under section 731 of the Act and contains information reasonably available to the petitioners supporting the allegations (see Initiation Checklist, Material Injury section).

Initiation of Antidumping Investigation

Based upon our examination of the petition on PDCVs from Japan and the petitioners' responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See Initiation Checklist. Therefore, we are initiating an antidumping duty investigation to determine whether imports of PDCVs from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. See Case Calendar section of the Initiation Checklist.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Japan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than February 28, 2002, whether there is a reasonable indication that imports of PDCVs from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

February 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–3387 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–351–806]

Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 2001, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. The merchandise covered by this order is silicon metal from Brazil. The review covers four manufacturers/exporters, Rima Industrial SA (Rima), Companhia Ferroligas Minas Gerais - Minasligas (Minasligas), Ligas de Aluminia S.A. (LIASA) and Companhia Carbureto de Calcio (CBCC). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On August 6, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. See Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 66 FR 40980 (August 6, 2001). The review covers four manufacturers/exporters, RIMA, Minasligas, LIASA and CBCC. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. We received comments on November 21, 2001, from Rima, Minasligas, and CBCC (collectively respondents), and from American Silicon Technologies and Elkem Metals Company (collectively petitioners). On December 4, 2001, we received a rebuttal brief from petitioners and Rima, Minasligas and CBCC. On December 31, 2001, we received comments from petitioners concerning the Department's application of section 772(e) of the Act to CBCC's further manufactured sales in the preliminary results. On January 10, 2002, we received rebuttal comments from CBCC. In response to requests by petitioners, we issued a series of supplemental questionnaires to CBCC on January 2, 25 and 29 of 2002. We received supplemental responses from CBCC on January 10, 28 and 30 of 2002. We received comments from petitioners on CBCC's responses on February 1, 2002. We received comments from CBCC on petitioners comments on February 4, 2002. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 (''B–099'') of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the ''Decision Memorandum,'' accessible in B–099 and on the Web at www.ita.doc.gov/import admin/records/frn/.

1. We recalculated Minasligas' home market imputed credit expense using a corrected formula.

2. We corrected the conversion of Minasligas' U.S. inland freight expense.

3. We recalculated Minasligas' home market credit expense using a surrogate interest rate.

4. We recalculated Minasligas' imputed U.S. credit expense using the date of liquidation as the date of payment.

5. We set Minasligas' negative imputed U.S. credit expenses equal to zero.

6. We recalculated the financial expense ratio in CBCC's cost of production (COP) using total financial expenses without any reduction for ''financial income.''

7. We included interest revenue in the calculation of CBCC's net home market price.

8. We corrected the margin program to properly calculate CBCC's margin pursuant to the special rule.

9. We recalculated CBCC's home market credit expense using a surrogate interest rate.

10. We recalculated CBCC's home market imputed credit expense using the date of shipment from the factory as the date of shipment.

11. We recalculated Rima's general and administrative (G&A) expense ratio using its G&A expenses and annual cost of goods sold as reported on its financial statements.

12. We recalculated Rima's financial expense ratio using its financial expenses and annual cost of goods sold as reported on its financial statements.

13. We recalculated Rima's CV to include an amount for profit.

14. We converted Rima's gross unit price into the proper currency to calculate net U.S. price.

15. We recalculated Rima's home market selling expenses to divide by total cost.

16. We converted CBCC and Rima's U.S. packing costs into U.S. dollars.

17. We recalculated LIASA's home market credit expense using a surrogate interest rate.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
RIMA	0.35
MINASLIGAS	1.23
LIASA	0.00
CBCC	0.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. To calculate assessment rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.10 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Minasligas

Comment 1: Short-Term Interest Rate
Comment 2: Advanced Exchange Contracts (ACCs) and Payment Dates
Comment 3: Duty Drawback
Comment 4: Offset to Financial Expense
Comment 5: Calculation of Home Market Imputed Credit Expense
Comment 6: Double Conversion of Inland Freight
Comment 7: COS Adjustment for PIS/COFINS
Comment 8: Duty Drawback and ICMS and IPI Taxes

CBCC

Comment 9: Shipment Date
Comment 10: Consolidated Financial Statement
Comment 11: Financial Expense Ratio
Comment 12: Short-Term Income Offset
Comment 13: Interest Revenue
Comment 14: Nature of Sales to an Unaffiliated Customer for Purposes of Determining anAppropriate and Reasonable Surrogate for Purposes of Section 772(e) of the Act

Comment 15: Related-party Transactions and Failure to Examine Documents at Verification
Comment 16: Calculation of EP for Use As a Surrogate Price Under Section 772(e) of the Act
Comment 17: Application of Special Rule in Margin Program
Comment 18: Calculation of Home Market Imputed Credit Expenses
Comment 19: Constructed Export Price (CEP) Profit

Rima

Comment 20: Major Input Rule
Comment 21: G&A Expenses
Comment 22: Net Financial Expenses
Comment 23: ICMS, IPI and CV
Comment 24: CV Profit
Comment 25: Currency
Comment 26: Home Market Selling Expenses
Comment 27: Commercial Quantities
Comment 28: Unreviewed and Intervening Years
Comment 29: Aggregate Sales and Commercial Quantities
Comment 30: Impermissible Rule Making and Violation of the APA with Respect toCommercial Quantities

Rima and CBCC

Comment 31: Home Market Credit and ICMS
Comment 32: Conversion of U.S. Packing Costs

[FR Doc. 02–3384 Filed 2–11–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip from Mexico.

SUMMARY: On August 8, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (66 FR 41523). This review covers one manufacturer/exporter, Mexinox, S.A. de C.V. (Mexinox) of the subject merchandise to the United States during the period January 4, 1999 to June 30, 2000. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

Background

On August 8, 2001, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period January 4, 1999 through June 30, 2000. See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review (66 FR 41523). In response to the Department's invitation to comment on the preliminary results of this review, Mexinox and Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethelehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, Zanesville Armco Independent Organization, Inc. (collectively, petitioners) filed their case briefs on September 24, 2001 and their rebuttal briefs on October 9, 2001. At the request of respondent, we held a public hearing on October 17, 2001. On November 15, 2001, we published in the Federal Register our notice of the extension of time limits for this review (66 FR 57418). This extension established the deadline for this final as February 4, 2002.

Period of Review

The period of review (POR) is January 4, 1999 through June 30, 2000.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled

stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary,

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations:

• We recalculated home market credit expenses using a U.S. dollar short-term interest rate for those home market sales invoiced in U.S. dollars.
• We have classified all of Mexinox's U.S. sales as constructed export price (CEP) sales.
• We have calculated imputed credit expenses for certain U.S. sales that were unpaid based on the average payment period for sales with reported payment dates.
• As a result of applying the major inputs analysis to Mexinox's reported material costs, we have made an adjustment to those costs.
• We have recalculated Mexinox's general and administrative (G&A) expense ratio to include G&A expenses incurred by Mexinox on behalf of its home market affiliated reseller, Mexinox Trading, and an additional cost of labor expense.
• We included the entered value of subject merchandise entered for consumption in the United States but sold to unaffiliated parties outside the United States in the denominator of the assessment rate.

We have also corrected certain programming and clerical errors made in our preliminary results, where applicable. These changes are discussed in the relevant sections of the Decision Memorandum, accessible in room B–099 and on the Web at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Mexinox	2.26

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 30.85 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix–Issues in Decision Memorandum

Adjustments to Normal Value

Comment 1: Indirect Selling Expenses Incurred in the Home Market
Comment 2: Circumstances of Sale Adjustment to Normal Value
Comment 3: Imputed Credit on Home Market Sales Denominated in U.S. Dollars

Adjustments to United States Price

Comment 4: U.S. Packing Costs
Comment 5: Duty Drawback
Comment 6: Date of Payment for Certain Ken-Mac Resales

Cost of Production

Comment 7: Major Input Rule
Comment 8: Fixed Overhead Expenses
Comment 9: General & Administrative Expenses
Comment 10: Interest Expenses

Home Market Downstream Sales

Comment 11: Use of Sales by Mexinox Trading in the Calculation of Normal Value

Level of Trade

Comment 12: Classification of Certain U.S. Sales as Export Price or Constructed Export Price
Comment 13: Constructed Export Price Offset

Margin Calculations

Comment 14: Zeroing Negative Dumping Margins

Assessment Rates

Comment 15: Assessment Rate Methodology

Ministerial Errors

Comment 16: Weight Bases Used to Calculate the Difference-in-Merchandise Adjustment
Comment 17: Weight Bases Used to Calculate Extended Entered Values for Ken-Mac Metals, Inc. (Ken-Mac) and Copper & Brass Sales, Inc. (CBS)
Comment 18: Weight Conversion Factor
Comment 19: Application of Corrections from the Ken-Mac Sales Verification to CBS' Resales
Comment 20: Application of Neutral Facts Available to Ken-Mac's ''Unattributable'' Sales
Comment 21: Model Match Formatting Errors

[FR Doc. 02–3385 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 8, 2001, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. This review covers one manufacturer/exporter. The period of review (''POR'') is January 4, 1999 through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3434, or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives). [5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A. Spetrini, Deputy Assistant Secretary, for Import Administration, Group III to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test for Ugine in these final results of review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the *Web at http://ia.ita.doc.gov.*

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/manufacturer/exporter	Weighted-average margin (Percent)
Ugine	3.11

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of stainless steel sheet and strip in coils from France entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.38 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France,* 64 FR 40562 (July 27, 1999).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of doubled antidumping and countervailing duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 7, 2002.

Faryar Shirzad,

Assistant Secretary, for Import Administration.

Appendix

Issues in Decision Memo

Comments and Responses

General Comments

1. Inclusion of Affiliate U.S. sales
2. Home Market Downstream Sales
3. Negative Margin sales in calculating the antidumping duty margin
4. U. S. commission rate for certain U.S. sales by Hague Steel
5. Foreign Inland Freight
6. CEP Profit
7. Further Manufacturing sales
8. Commission offset and CEP offset
9. Home Market Surcharges
10. Inadvertent computer programming error

[FR Doc. 02–3386 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative review of stainless steel sheet and strip in coils from Japan.

SUMMARY: On August 8, 2001, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan. This review covers one manufacturer/exporter. The period of review (''POR'') is January 4, 1999 through June 30, 2000.Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or James C. Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–0409, or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001). *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295 (May 19, 1997).

Background

On August 8, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan*, 66 FR 41543 (August 8, 2001). This review covers one manufacturer/exporter. The POR is January 4, 1999 through June 30, 2000. We invited parties to comment on our preliminary results of review. On September 21, 2001, both respondent, Kawasaki Steel Corporation (''Kawasaki''), and petitioners timely filed their case briefs in this administrative review. On September 28, 2001, Kawasaki and petitioners timely filed their rebuttal briefs. On November 30, 2001, the Department fully extended the time limit for issuing the final results of this administrative review to February 4, 2002. *See Extension of Time Limit for the Final*

Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan, 66 FR 63364 (December 6, 2001). The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Upon completion of four changed circumstances reviews pursuant to section 751(b) of the Act and section 351.216 of the Department's regulations, we have excluded certain products from the scope of the order. These four excluded products are identified in the scope, infra.

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219130031, 7219130051, 7219130071, 7219130081[1], 7219140030, 7219140065, 7219140090, 7219320005, 7219320020, 7219320025, 7219320035, 7219320036, 7219320038, 7219320042, 7219320044, 7219330005, 7219330020, 7219330025, 7219330035, 7219330036, 7219330038, 7219330042, 7219330044, 7219340005, 7219340020, 7219340025, 7219340030, 7219340035, 7219350005, 7219350015, 7219350030, 7219350035, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220121000, 7220125000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220207005, 7220207010, 7220207015, 7220207060, 7220207080, 7220208000, 7220209030, 7220209060, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent

[1] Due to changes to the HTS numbers in 2001, 7219130030, 7219130050, 7219130070, and 7219130080 are now 7219130031, 7219130051, 7219130071, and 7219130081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36''' is a trademark of Imphy, S.A.

or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Also excluded are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (''AWS'') specification ANSI/AWS A5.9–93. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 17856 (April 5, 2000). The products are 0.5 mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER308L, ER 309L, ER 316L and ER347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon	0.03% maximum
Chromium	20.0–22.0%
Nickel	10.0–12.0%
Molybdenum	0.75% maximum
Manganese	1.0–2.5%
Silicon	0.65% maximum
Phosphorus	0.03% maximum
Sulphur	0.03% maximum
Copper	0.75% maximum
Columbium	8 times the carbon level minimum - 1.0% maximum

Also excluded is certain stainless steel used for razor blades, medical surgical blades, and industrial blades, and sold under proprietary names such as DSRIK7, DSRIK8, and DSRIK9. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 54841 (September 11, 2000). This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1.000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight: Carbon 0.65% to 1.00%, Silicon 1.00% maximum, Manganese 1.00% maximum, Phosphorus 0.35% maximum, Sulfur 0.25% maximum, Nickel 0.35% maximum, Chromium 0.15% maximum, Molybdenum 0.30% maximum.

Also excluded is certain stainless steel lithographic sheet. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 64423 (October 27, 2000). This sheet is made of 304–grade stainless steel and must satisfy each of the following fifteen specifications. The sheet must have: (1) an ultimate tensile strength of minimum 75 KSI; (2) a yield strength of minimum 30 KSI; (3) a minimum elongation of 40 percent; (4) a coil weight of 4000–6000 lbs.; (5) a width tolerance of -0/+0.0625 inch; and (6) a gauge tolerance of +/-0.001 inch. With regard to flatness, (7) the wave height and wave length dimensions must correspond to both edge wave and center buckle conditions; (8) the maximum wave height shall not exceed 0.75 percent of the wave length or 3 mm (0.118 inch), whichever is less; and (9) the wave length shall not be less than 100 mm (3.937 inch). With regard to the surface, (10) the surface roughness must be RMS (RA) 4–8; (11) the surface must be degreased and no oil will be applied during the slitting operation; (12) the surface finish shall be free from all visual cosmetic surface variations or stains in spot or streak form that affect the performance of the material; (13) no annealing border is acceptable; (14) the surface finish shall be free from all defects in raised or depression nature (e.g., scratches, gouges, pimples, dimples, etc.) exceeding 15 microns in size and with regard to dimensions; and (15) the thickness will be .0145+/-.001 and the widths will be either 38'', 38.25'', or 43.5'' and the thickness for 39'' material will be .0118 +/-.001 inches.

Also excluded is nickel clad stainless steel sheet and strip in coils from Japan. See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part, 65 FR 77578 (December 12, 2000). This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm to 540 mm; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickel cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon 0.02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81,

[4] ''Durphynox 17''' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5''' and ''GIN6''' are the proprietary grades of Hitachi Metals America, Ltd.

Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material is sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the HTS.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home market below-cost sales that failed the cost test for Kawasaki in the final results of this review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in programming. Discussion of these changes in programming are discussed in the relevant sections of the Decision Memo, accessible in B–099 and available on the Web at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/Manufacturer/Exporter	Weighted-Average Margin
Kawasaki Steel Corporation	1.92%

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to the export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for the importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 40.18 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 40565 (July 27, 1999).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

General Issues:

Comment 1: Negative Dumping Margins
Comment 2: Currency Conversion of Advertising Expenses
Comment 3: Choice of Home Market CONNUM
Comment 4: Home Market Sales Reporting Period
Comment 5: Grade Codes
Comment 6: Downstream Sales
Comment 7: Coil Reporting Errors
Comment 8: Post-Shipment Revisions
Comment 9: U.S. Market Database

[FR Doc. 02–3382 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC).

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of Meeting.

SUMMARY: The APAC will have a closed meeting on February 27, 2002 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on February 6, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the February 27 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: February 7, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–3371 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Mary Clague, 301–975–4188, National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[Docket No.: 97–017C–CIP]

Title: Domain Engineered Ferroelectric Optical Radiation Detector Having Multiple Domain Regions For Acoustic Dampening.

Abstract: The invention comprises a pyroelectric detector with significantly reduced microphonic noise sensitivity comprising a pyroelectric detector element constructed from a z-cut $LiNbO_3$ electret. Selective domain reversal is accomplished in the electret by applying an electric field. Electrodes are attached to either surface of the electret spanning the domain reversed region and a portion of the original domain region to create areas of equal and opposite sensitivity. The detector is mounted in an electrically grounded container or housing. The detector may also be constructed having multiple detector regions to accommodate resonant frequencies of the electret or to function as a position sensor.

[Docket No.: 00–005US]

Title: Cavity Ringdown Spectroscopy System Using Differential Heterodyne Detection.

Abstract: This invention is jointly owned by the University of Colorado and the Department of Commerce. The Department's interest is available for licensing. An ac technique for cavity ringdown spectroscopy permits 1×10^{-10} absorption sensitivity with microwatt light power. Two cavity modes are provided temporarily out of phase such that when one mode is decaying, the other mode is rising. When one of the modes probes intra-cavity absorption of a sample gas, heterodyne detection between the two modes reveals dynamic time constants associated with the cavity and the cavity plus intra-cavity absorption. The system and method provides a quick comparison between on-resonance and off-resonance modes and enables sensitivities that approach the shot-noise limit.

[Docket No.: 01–001US]

Title: Sensitive and Selective Chemical Sensor with Nanostructured Surfaces.

Abstract: The invention was made jointly by scientists from NIST and Informed Diagnostics, Inc. under the auspices of a Cooperative Research and Development agreement(CRADA). A novel chemical sensor is described that utilizes an optical resonator with nanostructured surfaces to permit highly sensitive and selective chemical detection by absorption spectroscopy, typically in the visible spectral region. The analyte is not required to possess a significant absorption cross section at the probe wavelength. Instead, the absorption of one or more nanoparticles that are bound to the resonator surface is detected. These nanoparticles have an enormous absorption cross section, which is highly sensitive to the dielectric properties of the particle or its environment. The analyte is detected by combining the sensitive optical response of the nanoparticle with selective chemical interactions that modify the dielectric properties of the particle or its environment. These selective interactions can occur by (1) a direct chemical interaction between the nanoparticle and the analyte that alters the nanoparticle optical constants, or (2) employing a coated nanoparticle that selectively binds the analyte to produce an effective coating refractive index change. The nanoparticles can be formed from gold, silver, cadmium sulfide, zinc selenide, or other material and have a spherical, spheroidal, tetrahedral, or other shape. Typically,

metal or semiconductor particles are employed which support a surface plasmon polariton resonance (SPPR). The nanoparticles modify one or more surfaces of an optical resonator where a light beam interrogates the absorption change in response to the analyte. In one embodiment, the nanoparticles modify one or more ultra-smooth surfaces of a high-finesse resonator that employs intracavity total internal reflection, allowing evanescent wave cavity ring-down spectroscopy (EW–CRDS) to be employed for probing the absorbance change. Through proper choice of nanoparticle density, size, shape, material, coating, and resonator design, a miniature chemical sensor is achieved, permitting trace detection of a wide range of absorbing or non-absorbing analytes in the gas or liquid phase.

Dated: February 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–3314 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000411102-2008–04; I.D. 010202B]

RIN 0648–ZA85

Financial Assistance for Community-based Habitat Restoration Projects

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-Based Restoration Program (CRP). This document describes the conditions under which applications (project proposals) will be accepted under the CRP, and describes criteria under which applications will be evaluated for funding consideration. Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a project grant, cooperative agreement, or interagency transfer.

DATES: Applications for funding under the CRP will be accepted upon publication of this document in the **Federal Register** and must be received by or postmarked by April 15, 2002. Applications received or postmarked after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Applications delivered by a delivery service after the postmark date will be accepted for review if the applicant can document that the application was provided to the delivery service on or prior to the specified postmark cut-off date. In any event, applications received later than 15 business days following the closing date will not be accepted. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Project Applications.

See **SUPPLEMENTARY INFORMATION** section under *Electronic Access* for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local level to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, state, and Federal agencies to cooperatively implement habitat restoration projects. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally-important living marine resources, as well as develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that communities can play in habitat restoration, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see *Electronic Access*.

II. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666, to provide grants or cooperative agreements for fisheries habitat restoration.

III. Catalogue of Federal Domestic Assistance

The CRP is described in the ''Catalogue of Federal Domestic Assistance,'' under program number 11.463, Habitat Conservation.

IV. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Due to a significant

increase in funding that became available to the CRP starting in FY 2001, applications from Federal agencies will be considered. Although Federal agencies are eligible to apply under this solicitation, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply, rather than seeking project funding directly from the CRP. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/NOAA encourages proposals for habitat restoration projects involving MSIs according to the criteria in this document.

V. Eligible Restoration Activities

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passageway; natural or artificial reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth areas essential to marine or anadromous fish. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used or formerly used by anadromous fish. Priorities for habitat restoration activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources.

To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects on permanently protected lands may be given priority consideration.

Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular restoration component, such as only outreach or program coordination are discouraged, as are applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead and travel. The CRP anticipates the availability of funds for high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration. Proposals emphasizing science-based monitoring of existing or simultaneously proposed CRP projects are encouraged.

Although NOAA recognizes that water quality issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects rather than direct water quality improvement measures, such as wastewater treatment plant upgrades or combined sewer outfall improvements. Similarly, the following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, and (3) activities that are required by a separate consent decree, court order, statute or regulation. Funds from the CRP may be sought to enhance restoration activities beyond the scope legally required by these activities. As a matter of CRP policy, funding land purchase agreements and conservation easements will be a low priority.

VI. Funding Availability

This solicitation announces that funding of up to $2,000,000 will be available for community-based habitat restoration projects in FY 2002. The NOAA Restoration Center anticipates that typical project awards will range from $50,000 to $200,000; NOAA will not accept proposals for under $20,000 or proposals for over $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating restoration projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the CRP by Congress. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

VII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible; applicants with less than 1:1 match will not be disqualified.

For non-Federal applicants, the match can come from a variety of public and private sources and can include in-kind goods and services; cash match is highly encouraged. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

VIII. Award Period

Generally, the CRP will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 18 months from the approved start date of the project. If an application is selected for funding, NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

IX. Electronic Access

Information on the CRP, including examples of community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community/index.html*.

The standard NOAA application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Applicants are encouraged to contact the NOAA Restoration Center to request an application package that contains instructions for submitting NOAA standard grants applications and supplementary instructions specific to the NOAA Community-Based Restoration Program.

X. Application Process

To submit a proposal, a complete NOAA standard grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: Cover sheet-an applicant must use Office of Management and Budget (OMB) Standard Form 424 as the cover sheet for each project; budget detail (SF 424A and budget justification narrative); grant assurances SF424B and CD-511, and SF-LLL and CD-346 if applicable; and narrative project description (statement of work). Budgets should include a detailed breakdown by category of cost (object class) separated into Federal and non-Federal shares as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

In general, applications should clearly demonstrate the broad-based benefits expected to specific habitats, and how these benefits will be achieved through the proposed restoration activities. The narrative project description should be no more than 10 double-spaced pages long, in 12–point font, and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short- and long-term objectives and goals, the methods for carrying out and monitoring the project, and the project's relevance to enhancing habitat to benefit living marine resources. The project narrative should describe the organizational structure of the applicant group, detail its qualifications, and identify proposed project staff; participants (project partners) other than the applicant, and their contributions should be identified. Applicants should indicate if the project has been submitted for funding consideration elsewhere, whether the funds requested are Federal or non-Federal, and what amount has been requested or secured from other sources. The need for assistance should be demonstrated, and the narrative should provide assurance that all necessary environmental permits and consultations will be secured prior to the use of Federal funds for construction. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. All incomplete applications will be returned to the applicant. Three copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional copies (seven are needed for reviewing purposes) if it does not cause a financial hardship. Applications for multiple projects submitted by the same applicant must be submitted in separate envelopes.

XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XII. Project Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the NOAA Grants Management Division, the U.S. Department of Commerce, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well applications meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC.

Applications for habitat restoration projects will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and composite project ranks will be presented to the Director of the

NOAA Restoration Center (Director). The Director, in consultation with CRP staff, will consider the evaluations and may take into account the following: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed activities with other projects that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers that would affect achievement of the CRP's objectives as described in this announcement and the CRP Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, awards may not necessarily be made to the highest scored proposals. The Director, in consultation with CRP staff, will select the proposals to be recommended to the Grants Management Division for funding and determine the amount of funds available for each approved proposal. Unsuccessful applicants will be notified in writing that their proposal was not among those selected for funding, and unsuccessful applications will be kept on file until the close of the current fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA CRP staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 60 days after the close of this solicitation. The earliest date for receipt of awards will be approximately 120 days after the close of this solicitation, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed restoration activities.

XIII. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 to 60 points based on the following four evaluation criteria and respective weights.

(1) Potential of the Project to Benefit Living Marine Resources (15 points)

Proposals will be evaluated on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. In particular, NOAA will evaluate proposals based on the amount and type of habitat proposed for restoration and the potential of the applicant to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship; whether the habitat(s) to be restored will benefit commercial, recreational, threatened or endangered species; whether the proposal addresses a priority habitat, restoration need, special consideration, or is part of a watershed or community stewardship plan; whether the effects of restoration are expected to persist; and whether the proposed project will complement or encourage other local restoration activities. Proposals for science-based monitoring of existing or simultaneously proposed CRP projects will be evaluated on the extent to which the potential results advance restoration methods, techniques and project implementation.

(2) Technical Merit and Adequacy of Project Implementation Plan (15 points)

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects. Communities and/or organizations developing their first locally-driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion.

Proposals also will be evaluated on the adequacy of the implementation plan and the applicant's ability to: deliver the restoration objective stated in the proposal; demonstrate that the restoration activity will result in tangible benefits and will be sustainable and long-lasting; provide for long-term management of the restored resource, including adequate monitoring and a method for evaluating project success; and provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining or proceeding to obtain applicable permits and consultations. Projects on permanently protected lands may be given priority consideration.

(3) Community Commitment and Partnership Development (15 points)

Proposals will be evaluated on activities proposed to involve citizens and broaden their participation in habitat restoration or science-based monitoring and the depth and breadth of community support, as reflected by the diversity and strength of project partners. Community participation may include: (a) hands-on training, restoration and monitoring activities undertaken by volunteers; (b) sponsorship by local entities, either through in-kind goods and services (earth-moving services, technical expertise, conservation easements) or cash contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored resources and to generate a community conservation ethic.

(4) Cost-effectiveness and Budget Justification (15 points)

Proposals will be evaluated on the percentage of funds that will be dedicated to all phases of project implementation including physical, on-the-ground restoration and/or science-based monitoring, compared to the percentage that is for administration, salaries, overhead and travel. Applications proposing to use restoration funds to expand an organization's day-to-day activities are unlikely to obtain a high score under this criterion. To encourage on-the-ground restoration, funding for salaries must be used to support staff directly involved in accomplishing the restoration work. Proposals also will be evaluated on the need for funding and the overall leverage of NOAA funds anticipated, including the amount of cash match; the potential for, or demonstrated NOAA involvement in, the project; the ability to which the proposed project is likely to catalyze future restoration and protection of living marine resources; and the ability of the applicant to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA will expect cost-sharing to leverage funding and to further encourage partnerships among government, industry, and academia.

XIV. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are ''necessary and reasonable.'' Allowable costs are determined by

reference to the OMB Circulars A–122, ''Cost Principles for Non-profit Organizations''; A–21, ''Cost Principles for Education Institutions''; A–87, ''Cost Principles for State, Local and Indian Tribal Governments''; and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 ''Contracts with Commercial Organizations.''

XV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), will be applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

The CRP will determine National Environmental Policy Act compliance on a project by project basis.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: February 6, 2002.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3376 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020602B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and the Reef Fish Advisory Panel (AP).

DATES: The meetings will be held on Tuesday, February 26 through Thursday, February 28, 2002. The Council's Reef Fish AP will convene at 9 a.m. (CST) on Tuesday, February 26, 2002, and conclude by 12 noon on Wednesday, February 27, 2002. The SSC will subsequently convene at 1:30 p.m. on Wednesday, February 27, 2002 and will conclude by 5 p.m. on Thursday, February 28, 2002.

ADDRESSES: The meetings will be held at the New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, the Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and the SSC will review a draft Red Grouper Rebuilding Plan Regulatory Amendment and to provide recommendations to the Council on red grouper regulations. Red grouper were declared to be overfished and undergoing overfishing by the Acting Southeast Regional Administrator for NMFS in October 2000. The Council originally began developing a rebuilding plan as part of Draft Reef Fish Amendment 18, which addressed a number of other reef fish issues. However, due to delays in the development of Amendment 18, the Council chose to separate out the rebuilding plan and proceed with it through a separate regulatory amendment.

The red grouper regulatory amendment contains alternatives for determining the sustainable fishing parameters on which a rebuilding plan is based. These include maximum sustainable yield (MSY), the fishing mortality rate that produces MSY (FMSY), the biomass or biomass proxy that supports MSY (BMSY), the minimum stock size threshold below which a stock is considered to be overfished (MSST), the maximum fishing mortality threshold above which a stock is considered to be undergoing overfishing (MFMT), and optimum yield (OY). The regulatory amendment also contains alternatives for selecting a rebuilding strategy and rebuilding scenarios (combinations of management measures) to achieve rebuilding. In addition to the pre-constructed scenarios, the regulatory amendment contains individual alternatives to adjust the shallow-water grouper quota, implement or adjust closed seasons, implement commercial trip limits, adjust recreational bag limits, move the longline/buoy gear boundary, and change the starting date of the commercial reef fish fishing year.

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 19, 2002.

Dated: February 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3380 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020602C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee and Scallop Oversight Committee in February and March, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on February 28, 2002 and March 4 and 5, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 28, 2002, 10 a.m.—Monkfish Oversight Committee Meeting.

The committee will finalize recommendations to the Council on goals and objectives for Amendment 2 to the Monkfish Fishery Management Plan (FMP) for approval in March. The committee will also begin to outline alternative management strategies to achieve those goals and objectives.

Monday, March 4, 2002, 10 a.m. and Tuesday, March 5, 2002, 9:30 a.m.—Scallop Oversight Committee Meeting.

The Oversight Committee will continue development of management alternatives for Draft Amendment 10 to the Sea Scallop FMP. The committee will evaluate habitat and bycatch technical advice from the joint meeting of the Habitat Technical Team, the Groundfish Plan Development Team (PDT) and the Scallop PDT. Recommendations will be developed for draft alternatives in Scallop FMP Amendment 10 to minimize, to the extent practicable, bycatch and habitat impacts from scallop fishing. Other issues and measures associated with Amendment 10 may also be developed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 7, 2002.

Matteo Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3381 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Disposal of Paper Copies of U.S. Patents Removed From the Examiners' Search Rooms

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is considering whether the paper copies of selected subclasses of U.S. patents to be removed from the examiners' search rooms should be disposed of as wastepaper or donated to a non-profit organization. The USPTO is seeking input on whether any non-profit organization is interested in acquiring the paper copies of the U.S. patents to be removed from the examiners' search rooms.

DATES: Any interested non-profit organization should contact the USPTO on or before March 14, 2002 to indicate a desire to acquire paper copies of U.S. patents. If such interest is expressed, and the USPTO proceeds with donating the paper copies of U.S. patents removed from the examiners' search rooms to a non-profit organization, interested non-profit organizations will then be required to contact the USPTO within thirty days of the date the USPTO's web site is updated to include the subclasses in which the organization is interested.

FOR FURTHER INFORMATION CONTACT: Any interested non-profit organization should contact Richard Seidel by facsimile marked ''ATTN EXAMINERS SEARCH ROOMS'' at (703) 308–7725. Questions concerning this notice may be directed to Richard Seidel by telephone at (703) 306–3431.

SUPPLEMENTARY INFORMATION: The USPTO is in the process of removing paper copies of selected subclasses of U.S. patents from the examiners' search rooms. The National Archives and Records Administration (NARA) has determined that paper copies of U.S. patents in the examiners' search rooms are temporary records that may be destroyed when no longer needed for current USPTO business. Some of the paper copies have already been destroyed. The USPTO is considering whether it should: (1) Dispose of the paper copies of the selected subclasses of U.S. patents removed from the examiners' search rooms as wastepaper; or (2) donate the paper copies of the selected subclasses of U.S. patents removed from the examiners' search rooms to a non-profit organization. Therefore, the USPTO is seeking input on whether any non-profit organization is interested in acquiring the paper copies of U.S. patents to be removed from the examiners' search rooms (the USPTO is not currently aware of any).

Any donation of paper copies of U.S. patents must comply with the NARA regulations for the donation of temporary records which are set out in 36 CFR 1228.60. For example, the donee must be a non-profit organization and must agree not to sell the U.S. patent copies except as wastepaper, the donation must be made without cost to the United States Government, and NARA must provide written approval of the donation. Thus, even if there is interest by a non-profit organization in acquiring the paper copies of U.S. patents removed from the examiners' search rooms, the USPTO may still dispose of them as wastepaper if the USPTO cannot donate them to the non-

profit organization in a cost-effective manner or if the USPTO cannot obtain written approval for the donation by NARA in a timely manner.

Since the USPTO is removing the paper copies of U.S. patents from the examiners' search rooms on a subclass-by-subclass basis, the USPTO is not in a position to accommodate a request by a non-profit organization for a complete set of all U.S. patents or even all U.S. patents in any particular class. The USPTO is only seeking non-profit organizations interested in the selected subclasses for which the paper copies of U.S. patents are being removed from the examiners' search rooms. In addition, as the USPTO will not be conducting a file integrity review of the paper copies of the U.S. patents in a subclass as they are being removed from the examiners' search rooms, the USPTO cannot assure that the paper copies of U.S. patents available for donation are a complete set of U.S. patents even as to the selected subclasses.

If the USPTO proceeds with donating the paper copies of U.S. patents removed from the examiners' search rooms to a non-profit organization, the USPTO will provide a list of the subclasses for which the paper copies of U.S. patents are being removed from the examiners' search rooms on the USPTO's Internet web site (www.uspto.gov). The USPTO will update this list when additional subclasses are removed from the examiners' search rooms.

The USPTO published a notice seeking public input on a proposal to eliminate patent and trademark classified paper files from the public search room. See Notice of Request for Comments on Development of a Plan to Remove the Patent and Trademark Classified Paper Files from the Public Search Room, 66 FR 45012 (Aug. 27, 2001), 1250 *Off. Gaz. Pat. Office* 137 (Sept. 25, 2001). This notice concerns a plan to dispose of paper copies of selected subclasses of U.S. patents removed from the examiners' search rooms and is not related to the development of a plan to eliminate patent and trademark classified paper files from the public search room.

Dated: February 5, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and, Director of the Patent and Trademark Office.

[FR Doc. 02–3276 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–16–P

THE COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 February 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, February 5, 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–3308 Filed 2–11–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China and Amendment of Export Visa and Certification Requirements for Textiles and Textile Products Integrated into GATT 1994 in the First, Second and Third Stage; Correction

February 6, 2002.

In the letter to the Commissioner of Customs published in the Federal Register on December 28, 2001 (66 FR 67229), on page 67230, 1st column, in the table listing import restraint limits, Category 239pt. was inadvertently omitted from the list of categories covered under Group I. The corresponding footnote, reading ''Category 239pt.: only HTS number 6209.20.5040 (diapers),'' was also inadvertently omitted from the list of footnotes on page 67230, 3rd column. A letter has been sent to the Commissioner of Customs to add this category to the categories listed under Group I and to add the corresponding footnote to the list of footnotes.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–3324 Filed 2–12–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Department of the Air Force is deleting six notices and amending one system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on March 14, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 6, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F065 AFAFC K

SYSTEM NAME:

USAF Retired Pay System (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7347b, Defense Military Retiree and Annuity Pay System (April 12, 1999, 64 FR 17629).

F065 AF AFC E

SYSTEM NAME:

Joint Uniform Military Pay System (JUMPS) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7340, Defense Joint Military Pay System-Active Component (April 12, 1999, 64 FR 17629).

F065 AFAFC C

SYSTEM NAME:

Uniformed Services Savings Deposit Program (USSDP) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7280, Uniformed Services Savings Deposit Program (USSDP) (August 30, 2000, 65 FR 52715).

F065 AF AFC D

SYSTEM NAME:

Air Reserve Pay and Allowance System (ARPAS) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7346, Defense Joint Military Pay System-Reserve Component (April 12, 1999, 64 FR 17629).

F065 AF AFC C

SYSTEM NAME:

Travel Records (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7333, Travel Payment System (August 22, 2000, 65 FR 50973).

F065 AFAFC G

SYSTEM NAME:

Indebtedness and Claims (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7332, Defense Debt Management System (April 8, 1997, 62 FR 16793).

Amendment

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record (August 21, 2001, 66 FR 43843).

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Disposition is pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration.''

* * * * *

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record.

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Surgeon General, 110 Luke Avenue, Room 400, Bolling Air Force Base, Washington, DC 20332–7050;

Headquarters, Air Force Medical Operations Agency, Family Advocacy Program, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254;

Major Command Surgeons' offices; Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD beneficiaries who are entitled to care at Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of suspected and established cases of family maltreatment, assessments and evaluations, investigative reports, check lists, family advocacy case management team minutes and reports, follow-up and evaluative reports, correspondence, and any other supportive data gathered relevant to individual family advocacy program cases. Records of family member exceptional medical and/or educational needs, medical summaries, individual educational program plans, general supportive documentation and correspondence. Secondary prevention records, assessment and survey instruments, service plans, and chronological data. Prevention contact activity files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 40–301, Air Force Family Advocacy Program, and E.O. 9397 (SSN).

PURPOSE(S):

To document the activities of the Family Advocacy Program as they relate to allegations of and substantiated cases of family maltreatment, exceptional educational and/or medical needs of family members, prevention activities, assessment and survey activities; compile database for statistical analysis, tracking, and reporting; evaluate program effectiveness and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To any member of the family in whose sponsor's name the file is maintained, in furtherance of treating any member of the family.

To the Attorney General of the United States or his authorized representatives in connection with litigation, or other matters under the direct jurisdiction of the Department of Justice.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

To officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies and relating to the coordination of family advocacy programs, medical care and research concerning family maltreatment and neglect and exceptional educational or medical conditions.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

To the Federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or families with exceptional medical or educational needs or when involved in child abuse or neglect.

To authorized surveying bodies for professional certification and accreditations.

To the individual organization or government agency as necessary when required by Federal statute, E.O., or by treaty. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with applicable statutes.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system, except as stipulated in the ''Note'' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, in computers, and on computer output products.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the sponsor or the sponsor's spouse.

SAFEGUARDS:

Records are maintained in various types of lockable filing equipment in monitored or controlled access lockable rooms or areas. Records are accessible only to authorized personnel that are properly screened and trained. Computer terminals are located in supervised areas with access controlled by password or other user-code systems. Records on computer storage devices are protected by computer system security software or physically stored in lockable filing equipment.

RETENTION AND DISPOSAL:

Disposition is pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Division Chief, Air Force Medical Operations Agency, Family Advocacy Division, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254, Major Command Surgeons, and Commanders of Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains information on them should address inquiries to the Family Advocacy Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices

Requests should include the name and Social Security Number of the individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking to access their records in this system should address requests to the Patient Affairs Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests should include the name and Social Security Number of the individual concerned.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, reports from physicians and other medical department personnel; reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. 02–3321 Filed 2–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 14, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 5, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,052.

Burden Hours: 4,224.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–3285 Filed 2–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–18: Energy Biosciences

AGENCY: Department of Energy (DOE)

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Science (SC), U.S. Department of Energy (DOE) invites applications from potential applicants for research funding in the Energy Biosciences program area. The Energy Biosciences program has the mission of generating knowledge about plants and non-medical microorganisms that provides scientific foundations for future energy related biotechnologies.

DATES: For timely consideration, all preapplications should be received by February 27, 2002. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated to the applicant by April 12, 2002. The deadline for receipt of formal applications is June 13, 2002.

ADDRESSES: Preapplications referencing Program Notice 02–18, should be sent by electronic mail to: energy.biosciences@science.doe.gov. Attn: Program Notice 02–18.

Formal applications, referencing Program Notice 02–18, must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–18. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Chemical Sciences, Geosciences and Biosciences Division, Office of Basic Energy Sciences, SC–143, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873; E-mail to: pat.snyder@science.doe.gov.

SUPPLEMENTARY INFORMATION: Potential applicants should submit a brief preapplication that consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The principal purpose in using preapplications is to reduce the expenditure of time and effort on the part of the applicant.

The Energy Biosciences program has the mission of generating knowledge about plants and non-medical microorganisms that provides scientific foundations for future energy related biotechnologies. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic and hormonal regulation, metabolic diversity, ion uptake, transport and accumulation; genetic transmission and expression; plant-microbial interactions; plant cell wall structure and function; lignocellulose degradative mechanisms; anaerobic metabolism, energetics and membrane phenomena; microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The program also encourages fundamental biological research that interfaces with traditional disciplines in the physical and earth sciences. The objective is to discern and understand basic mechanisms and principles.

Program Funding

It is anticipated that approximately $2,000,000 will be available for grant awards during FY 2003, contingent upon the availability of appropriated funds. Multiple year funding of grant

awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preapplication should consist of a two to three page concept paper that focuses on the scientific objectives and basic research approaches planned. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives us the opportunity to advise potential applicants on the suitability of the scope of the research proposed to the mission of the DOE Energy Biosciences program. A response indicating the appropriateness of submitting a formal application will be sent from the Energy Biosciences program office in time to allow for an adequate preparation period for a formal application.

When a formal application is made, it must be 10 pages or less, exclusive of figure illustrations, and include the hypotheses being tested and the proposed experimental design. Additional pages must include a one-page abstract or summary of the proposed research, curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Merit Review

Applications will be subjected to a scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the 10 CFR part 605 and the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Guide is possible via the Internet using the following Web Site address: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on February 4, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–3336 Filed 2–11–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–5–002]

Algonquin Gas Transmission Company; Notice of Amendment

February 6, 2002.

Take notice that on January 23, 2002, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP01–5–002, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Algonquin on December 21, 2001, in Docket Nos. CP01–5–000 (the HubLine Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Specifically, Algonquin seeks authorization to: (1) Modify the diameter of the 29.4 mile pipeline from 24 inches to 30 inches; (2) modify the diameter of the Deer Island Lateral from 16 inches to 24 inches; and (3) make minor modifications to two meter stations in order to accommodate the increased pipe diameters. Algonquin states that the incremental cost of modifying the HubLine Project facilities is estimated to be $19.6 million. Algonquin does not propose to amend the approved recourse rate to reflect the cost increase, but asserts that it will be at risk for the additional costs.

Algonquin states that these modifications will not increase the firm capacity made available by the HubLine Project (authorized in Docket No. CP01–5–000) due to existing constraints on its system. However, Algonquin notes that the proposed modifications will allow for future expansion of its system to meet growing demand with fewer environmental impacts.

Any questions regarding the application should be directed to Steven E. Tillman, Director of Regulatory Affairs, Algonquin Gas Transmission Company, P.O. Box 1642, Houston, Texas 77251–1642 at 713–627–5113.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission.

Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3327 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–316–005]

ISO New England, Inc.; Notice of Filing

February 6, 2002.

Take notice that on January 25, 2002, ISO New England Inc. (the ISO) hereby submitts its ''Index of Customers'' for the fourth quarter of 2001. Under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services the index of Customers lists all entities, both participatns in the New England Power Pool (NEPOOL) and Non-Participant customers unde the NEPOOL Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: February 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–3328 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–4–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment

February 6, 2002.

Take notice that on January 23, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP01–4–001, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Maritimes on December 21, 2001, in Docket Nos. CP01–4–000 (the Phase III Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Specifically, Maritimes proposes to increase the diameter of a one-mile segment of pipeline at the Beverly, Massachusetts terminus of its Phase III Project from a 24-inch diameter pipe to a 30-inch diameter pipe. Maritimes will also perform minor modifications at its Salem Metering Station to reflect a single 30-inch diameter pipeline for the entire Phase III Project, including the elimination of a 24-inch pig launcher and a 30-inch receiver that will no longer be necessary. Maritimes estimates that the cost of modifying the one mile of Phase III Project pipeline will increase the cost of the project by approximately $3.5 million. Maritimes acknowledges that it will have the burden of proof in any future rate case if it seeks to roll these additional costs into its system-wide rates. Maritimes asserts that the need for the amended authorization is dependent upon Algonquin Gas Transmission Company's related filing in Docket No. CP01–5–002 to increase its HubLine Project pipeline to 30-inch diameter line.

Any questions regarding the application should be directed to Joseph F. McHugh, Director, Regulatory Affairs, M&N Management Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135 at 617–560–1518.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before February 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3326 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11674–004, 11681–004, 11686–004, 11718–004 11720–004, 11780–004, 11819–004, 11825–004]

Universal Electric Power Corporation; Notice of Surrender of Preliminary Permits

February 6, 2002.

Take notice that Universal Electric Power Corporation, permittee for the projects listed below, has requested to surrender the preliminary permits because the proposed projects no longer meet its investment criteria.

Project No.	Project name	Stream	State	Expiration date
11674–004	Berlin Dam	Mahoning River	OH	05–31–2002
11681–004	Whitney Point Dam	Otselic River	NY	06–30–2002
11686–004	Mosquito Creek Dam	Mosquito Creek	OH	05–31–2002
11718–004	Patoka Lake Dam	Patoka River	IA	07–31–2002
11720–004	Cecil M. Hardin Dam	Raccoon River	IA	03–31–2002
11780–004	Pleasant Hill Dam	Mohican River	OH	09–30–2002
11819–004	Chouteau Lock & Dam	Verdigris River	OK	08–31–2002
11825–004	Newt Graham Lock & Dam	Verdigris River	OK	02–28–2003

The permittee filed the request on December 31, 2001, and the eight preliminary permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3331 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–79–000, et al.]

PG&E Dispersed Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 5, 2002.

Take notice that the following filings have been made with the Commission.

Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Generating Company, LLC

[Docket No. EG02–79–000]

Take notice that on January 31, 2002, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen), a Delaware limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

PG&E Dispersed Gen previously has been determined to be an EWG. This filing is occasioned by PG&E Dispersed Gen's acquisition of interests in two additional eligible facilities, and to notify the Commission that certain other eligible facilities are no longer operational. All output from its facilities will be sold exclusively at wholesale within the meaning of Section 32 of PUHCA.

Comment Date: February 26, 2002.

2. B.L. England Power LLC

[Docket No. EG02–80–000]

Take notice that on February 1, 2002, B.L. England Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant states that it is a limited liability company organized under the laws of the State of Delaware that is acquiring the B.L. England Station (Facilities) in Beesley's Point, New Jersey. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, Virginia, and New Jersey.

Comment Date: February 26, 2002.

3. Deepwater Power LLC

[Docket No. EG02–81–000]

Take notice that on February 1, 2002, Deepwater Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant states that it is a limited liability company organized under the laws of the State of Delaware that is acquiring the Deepwater Station in Pennsville, New Jersey (Facilities) and selling electric energy at wholesale. The total capacity of the operating units of the Facilities is 239 MW. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, Virginia, and New Jersey.

Comment Date: February 26, 2002.

4. Otter Tail Power Company

[Docket No. ER02–912–000]

Take notice that on January 31, 2002, Otter Tail Power Company submitted a Control Area Services and Operations Tariff and requested termination of its Open Access Transmission Tariff. The Control Area Services and Operations Tariff and the termination of the Open Access Transmission Tariff are proposed in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

5. Michigan Electric Transmission Company

[Docket No. ER02–914–000]

Take notice that on January 31, 2002, Michigan Electric Transmission Company (METC) tendered for filing a revised Service Agreement with Wolverine Power Supply Cooperative, Inc. (Customer) to continue arrangements regarding the use of Plains Road Substation facilities for the provision of Network Integration Transmission Service (designated Second Revised Service Agreement No. 8 under METC FERC Electric Tariff No. 1). The revised Service Agreement reflects the terms of a January 30, 2002 letter agreement to the Service Agreement which, among other things, lowers the Facilities Usage Fees from $888 to $635 per month and from $0.20/kW/month to $0.18/kW/month. METC requests a January 1, 2002 effective date.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment Date: February 21, 2002.

6. The Detroit Edison Company

[Docket No. ER02–915–000]

Take notice that on January 31, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing amended and restated electric supply agreements for wholesale power sales transactions under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff, Original Vol. No. 4 (the WPS–1 Tariff) between Detroit Edison and the City Croswell, Michigan; Detroit Edison and the Village of Sebewaing, Michigan; and Detroit Edison and Thumb Electric Cooperative.

Comment Date: February 21, 2002.

7. Otter Tail Power Company

[Docket No. ER02–916–000]

Take notice that on January 31, 2002, Otter Tail Power Company filed a proposal to cancel parts of its Open Access Transmission Tariff, substitute an Ancillary Services Form of Agreement, and to submit an Ancillary Services Agreement. Otter Tail Power Company filed this proposal in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–918–000]

Take notice that on January 30, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by Central Illinois Light Company (CILCO).

Copies of this filing were sent to all applicable customers under the CILCO Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–919–000]

Take notice that on January 31, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by Indianapolis Power & Light Company (IPL).

Copies of this filing were sent to all applicable customers under the IPL Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 21, 2002.

10. Michigan Electric Transmission Company

[Docket No. ER02–923–000]

Take notice that on January 31, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed revised Service Agreement for Network and Firm and Non-Firm Point to Point and Network Transmission Service with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of September 1, 2001. Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, Consumers and the Customer.

Comment Date: February 21, 2002.

11. Michigan Electric Transmission Company

[Docket No. ER02–924–000]

Take notice that on January 31, 2002 Michigan Electric Transmission Company, (METC) filed unexecuted Service Agreements for Network Integration Transmission and Network Operating Agreements (Agreements) with the Cities of Bay City, Eaton Rapids, Hart, Portland and St. Louis and the Village of Chelsea, (jointly, Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Agreements being filed are Service Agreement Nos. 138 through 143 under that tariff. Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements. Copies of the filed Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: February 21, 2002.

12. Southern California Edison Company

[Docket No. ER02–925–000]

Take notice that on January 31, 2002, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6. SCE proposes to revise its TO Tariff to reflect: (1) An increase in the Base transmission rate levels applicable to wholesale and retail service consistent with the increase in the Base Transmission Revenue Requirements; (2) a reduction to the Transmission Revenue Balancing Account Adjustment (TRBAA); and (3) changes to certain terms and conditions of the TO Tariff Tariff necessitated by the proposed transmission rate changes. The proposed changes would increase revenues from TO Tariff transmission customers by $44.7 million based on the 12 month period ending December 31, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation (ISO), the California Electricity Oversight Board, and all ISO-certified Scheduling Coordinators.

Comment Date: February 21, 2002.

13. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. ER02–926–000]

Take notice that on January 28, 2002, Western Resources, Inc. (d.b.a. Westar Energy), on its behalf and on the behalf of its wholly-owned subsidiary Kansas Gas and Electric Company (KGE) (d.b.a. Westar Energy), submitted for filing a notice of cancellation regarding its Peaking Capacity Sales Agreements with Kansas City Power & Light Company (KCPL).

Western Resources requests an effective date of January 28, 2002. Copies of the filing were served upon KCPL, the Kansas Corporation Commission and the Missouri Public Service Commission..

Comment Date: February 19, 2002.

14. LTV Steel Mining Company

[Docket No. ER02–927–000]

Take notice that on January 28, 2002, LTV Steel Mining Company filed with the Federal Energy Regulatory Commission (Commission) a Revised Agreement for Temporary Interconnection and Transmission Service under which it proposes to continue to provide temporary interconnection and transmission service to Rainy River Energy Corporation—Taconite Harbor over its transmission facilities.

Comment Date: February 19, 2002.

15. Ameren Services Company

[Docket No. ER02–928–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Fredericktown, Missouri (Fredericktown). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Fredericktown pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

16. Ameren Services Company

[Docket No. ER02–929–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Citizens Electric Corporation (Citizens). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Citizens pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

17. Ameren Services Company

[Docket No. ER02–930–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Farmington, Missouri (Farmington). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Farmington pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

18. Ameren Services Company

[Docket No. ER02–930–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Farmington, Missouri (Farmington). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Farmington pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

19. Ameren Services Company

[Docket No. ER02–931–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an

unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Owensville, Missouri (Owensville). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Owensville pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

20. Virginia Electric and Power Company

[Docket No. ER02–932–000]

Take notice that on January 31, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a redacted, non-confidential Wholesale Power Supply Agreement (Agreement) labeled ''Proprietary Commercial Information Redacted'' by Virginia Electric and Power Company to The United Illuminating Company, designated as Service Agreement Number 204, under the Company's FERC Electric Tariff, Third Revised Vol. No. 4. The Company also tendered an unredacted, confidential copy of the Service Agreement labeled ''Contains Proprietary, Commercial Information—Do Not Release'' and identifies the information for which privileged treatment is sought. The Company requests privileged treatment of certain information contained in the Agreement pursuant to section 388.112 of the Commission's regulations, 18 CFR 388.112 (2001).

The Company requests an effective date of January 1, 2002, the date service was first provided to the customer under the Agreement. Copies of the filing were served upon The United Illuminating Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission

Comment Date: February 21, 2002.

21. North American Electric Reliability Council

[Docket No. ER02–933–000]

Take notice that on January 31, 2002, the North American Electric Reliability Council filed a report and a motion for the continuation of its Market Redispatch Program beyond March 1, 2002.

Comment Date: February 21, 2002.

22. Commonwealth Edison Company

[Docket No. ER02–934–000]

Take notice that on January 31, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated unexecuted Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of February 1, 2002, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing was served on Exelon and Ormet.

Comment Date: February 21, 2002.

23. Boston Edison Company

[Docket No. ER02–936–000]

Take notice that on January 31, 2002, Boston Edison Company (Boston Edison) tendered for filing its First Revised Service Agreement No. 67 to Volume No. 8 of its Open Access Transmission Tariff. Service Agreement No. 67 is an executed service agreement between Boston Edison and Entergy Nuclear Generation Company for Network Integration Transmission Service. The purpose of the filing is to correct two typographical errors in the original service agreement. Boston Edison requests waiver of the Commission's regulations to permit an effective date of November 1, 1999 to coincide with the effective date of the original service agreement.

Copies of the filing were served upon the Entergy Nuclear Generation Company and the Massachusetts Department of Telecommunications and Energy.

Comment Date: February 21, 2002.

24. Cobb Electric Membership Corporation

[Docket No. ER02–937–000]

Take notice that on January 31, 2002, Cobb Electric Membership Corporation (Cobb) filed a long-term power sales agreement between Cobb and Pataula Electric Membership Corporation (the Agreement). Confidential treatment is being sought for the Agreement.

Comment Date: February 21, 2002.

25. Central Illinois Light Company

[Docket No. ER02–938–000]

Take notice that on January 31, 2002, Central Illinois Light Co. filed a proposal to cancel parts of its Open Access Transmission Tariff and substitute an Ancillary Services Form of Agreement. Such cancellation and substitution are proposed in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

26. Southern Company Services, Inc.

[Docket No. ER02–939–000]

Take notice that on January 31, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a department of SCS, as agent for Georgia Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the City of Hampton's Hampton Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Georgia Power Company, to the City of Hampton under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment Date: February 21, 2002.

27. Midwest Independent Transmission System Operator Inc.

[Docket Nos. RT01–87–006 and ER02–108–004]

Take notice that on January 28, 2002, Midwest Independent Transmission System Operator Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's Order issued in the above-referenced proceedings, 97 FERC ¶ 61,326 (2001), and revisions to the Midwest ISO Open Access Transmission Tariff , FERC Electric Tariff, First Revised Volume No. 1, and the Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (Midwest ISO Agreement), First Revised Rate Schedule FERC No. 1.

The Midwest ISO seeks an effective date of February 1, 2002.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385–2010 (2001), with respect to service on all parties on the official service list in these proceedings. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestios.org* under the heading ''Filings to FERC'' for

other interested parties in this matter. The Midwest ISO will provide hard copies to interested parties upon request.

Comment Date: February 19, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

Maglaie R. Salas,

Secretary.

[FR Doc. 02–3292 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2002.

a. *Application Type:* Application to Amend License for the Eagle & Phenix Mills Project.

b. *Project No:* 2655–041.

c. *Date Filed:* January 14, 2002.

d. *Applicant:* Eagle & Phenix Mills Hydro Company, Inc.

e. *Name of Project:* Eagle & Phenix Project.

f. *Location:* The project is located on the Chattahoochee River in Columbus, Georgia, and Phenix City, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Beth Harris, Eagle & Phenix Hydro Company, Inc., P.O. Box 8597, 1311 A Miller Road, Greenville, SC 29604. Tel: (864) 281–9634.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.gov.

j. *Deadline for filing comments and/or motions:* (March 14, 2002).

Please include the project number (2655–041) on any comments or motions filed.

k. *Description of Filing:* The licensee requests to amend the license to reduce the project's authorized capacity from 28.66 MW to the existing capacity of 4.26 MW, and adjust the project's annual charges accordingly.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3329 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7856–025.

c. *Date Filed:* December 21, 2001.

d. *Applicant:* Willow Creek Hydro, LLC (Transferee).

e. *Name of Project:* Potosi.

f. *Location:* On South Willow and Potosi Creeks near Pony, in Madison County, Montana. The project would affect lands of the Beaverhead National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Curry, 110 Sunrise Drive, Dillon, Montana 59725, (406) 683–3326.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* March 14, 2002.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2008(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Please include the project number (P–7856–025) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. Description of Transfer: Potosi Generating Station, Inc. (Transferor) was dissolved in December 1998 and no longer exists. Willow Creek Hydro, LLC seeks Commission approval to transfer the license for the Potosi Project from Potosi Generating Station, Inc. to Willow Creek Hydro, LLC.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3330 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000 et al.]

Notice of Technical Conference

February 5, 2002.

In the matter of: RT01–2–001, RT01–2–002, RT01–2–003, RT01–10–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–86–001, RT01–86–002, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–95–001, RT01–95–002, RT01–98–000, RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–100–000, RT02–1–000, EL02–9–000; RT01–2–001, RT01–2–002, RT01–2–003, RT01–10–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–86–001, RT01–86–002, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–95–001, RT01–05–002, RT01–98–000, RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–100–000, RT02–1–000, RT02–9–000; PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc., Allegheny Power, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Southwest Power Pool, Inc., Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC, Entergy Services, Inc., Southern Company Services, Inc., California Independent System Operator Corporation, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc., Midwest Independent System Operator, Alliance Companies, NSTAR Services Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C., Regional Transmission Organizations, Regional Transmission Organizations, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc., Allegheny Power, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Southwest Power Pool, Inc., Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC, Entergy Services, Inc., Southern Company Services, Inc., California Independent System Operator Corporation, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc., Midwest Independent System Operator, Alliance Companies, NSTAR Services Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C., Regional Transmission Organizations, Regional Transmission Organizations, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico,

Tucson Electric Power Company, WestConnect RTO, LLC.

Take notice that a technical conference will be held on February 19, 2002, to discuss the allocation of regional transmission organization (RTO) characteristics and functions between separate organizations within an RTO region.[1] Participants also may address the allocation of responsibility for performing other wholesale market functions (e.g. administration of a balancing market and security coordination) at the conference.[2] Members of the Commission may attend and participate in the discussions. All interested persons may attend.

The conference will be held from approximately 9:00 a.m. to 5:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, in the Commission Meeting Room on the second floor. The Commission is inviting selected panelists on these topics to participate in this conference; it is not at this time entertaining requests to make presentations. There will be an opportunity for non-panelists to submit comments in the above dockets.

The Capitol Connection broadcasts all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about the Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit www.capitolconnection.gmu.edu. The Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

Those interested in obtaining transcripts of the conference will need to contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646.

Further details about the agenda and organization of the conference, the panelists and submission of comments will be specified in a subsequent notice. Other questions about the conference program should be directed to: Diane Bernier, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street, NE, Washington, DC 20426, (202) 219–2886.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3334 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The RTO characteristics are: (1) Independence; (2) scope and regional configuration; (3) operational authority; and (4) short-term reliability. RTO functions include: (1) tariff administration and design; (2) congestion management; (3) parallel path flow; (4) ancillary services; (5) OASIS, total transmission capacity and available transmission capacity; (6) market monitoring; (7) planning and expansion; and (8) interregional coordination. *See* Regional Transmission Organizations, Order No. 2000, FERC Stats. And Regs. 31,089 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. And Regs. 31,092 (2000), *aff'd,* Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[2] *See* Order Providing Guidance on Continued Processing of RTO Filings, 97 FERC ¶ 61,146 at 61,633 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–000]

Southern Natural Gas Company; Notice of Site Visit

February 6, 2002.

On February 11, 12, 13, and 14, 2002, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification site visit of Southern Natural Gas Company's (Southern) South System Expansion II Project in St. Tammany Parish, Louisiana; Clarke, Lauderdale, and Jefferson David Counties, Mississippi; Sumter, Marengo, Hale, Perry, Autauga, Elmore, Tallapoosa, and Lee Counties, Alabama; and Harris, Talbot, Monroe, Bibb, Jones, Baldwin, Washington, Jefferson, Richmond, Upson, Effingham, and Chatham Counties, Georgia. The project area will be inspected by automobile and on foot, as appropriate. Representatives of Southern will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For additional information, contact the Commission's Office of External Affairs at (202) 208–1088.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3325 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–000 and RP01–253–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

February 6, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 am on Wednesday, February 13, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3332 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 6, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary. In addition, on November 9, 2001, the Commission issued an Order, 97 FERC ¶ 61,182, Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, wherein the Commission declared that it would treat, as exempt, State-Federal regional panel discussions between the Commission staff and state agencies which are parties to certain proceedings listed below. The order requires that the meetings of the panels be transcribed and placed in the decisional record. The order reiterated the standard requirement that the OSEC publish notice of the exempt communications and noted that the parties then have an opportunity to

respond to such communications. See 18 CFR 385.2201(g).

On November 27, 2001, the State-Federal Midwest Panel discussion was held. On January 9, 2002, the State-Federal Northeast Panel discussion was held. Transcripts were prepared during both discussions and placed in the decisional record. Copies of these transcripts are on file with the Commission and are available for public inspections. The documents my be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). The affected docket numbers are RT02–2–000, RT01–1–000, RT01–2–003, RT01–10–000, RT01–13–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–44–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–82–000, RT01–83–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–89–000, RT01–90–000, RT01–92–000, RT01–93–000, RT01–94–000, RT01–95–000, RT01–96–000, RT01–98–000, RM99–2–000, ER99–3144–000, EC99–80–000, RT01–99–000, RT01–100–000, RT02–1–000, EL01–80–000, RT01–37–000, RT01–84–000, RT01–26–000, ER01–123–000, ER01–2995–000, ER01–2993–000, ER01–2999–000, ER01–2997–000, ER01–2992–000, ER01–3000–000, RT01–101–000, EC01–146–000, ER00–3295–000, EC01–137–000, EL01–116–000, ER02–108–000, RM98–1–002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3333 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–4]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at EPA (202) 260–4901, or email at *auby.susan@mail.epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1663.03; Information Collection Request Update for the Compliance Assurance Monitoring Program; in 40 CFR part 64; was approved 11/27/2001; OMB No. 2060–0376; expires 11/30/2004.

EPA ICR No. 1487.07 Cooperative Agreements and Superfund State Contracts for Superfund Response Action; in 40 CFR part 35, subpart 0; was approved 11/26/2001; OMB No. 2050–0179; expires 11/30/2004.

EPA ICR No. 1730.03; Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators; in 40 CFR part 60, subpart Ec; was approved 11/23/2001; OMB No. 2060–0363; expires 11/30/2004.

EPA ICR No. 1051.08; New Source Performance Standards for Portland Cement Plants; in 40 CFR part 60, subpart F; was approved 11/23/2001; OMB No. 2060–0025; expires 11/30/2004.

EPA ICR No. 1062.07; NSPS for Coal Preparation Plants; in 40 CFR part 60, subpart Y; was approved 11/23/2001; OMB No. 2060–0122; expires 11/30/2002.

EPA ICR No. 0661.06; NSPS for Asphalt Processing and Asphalt Roofing Manufacture, Reporting and Recordkeeping Requirements; in 40 CFR part 60, subpart UU; was approved 11/23/2001; OMB No. 2060–0002; expires 11/30/2004.

EPA ICR. No. 1011.05; Partial updating of TSCA Inventory Data Base, Production 40 CFR part 710; was approved 11/26/2001; OMB No. 2070–0070; expires 11/30/2004.

EPA ICR No. 0596.07; Application and Summary Report for Emergency Exemption for Pesticides; in 40 CFR part 166; was approved 11/26/2001; OMB No. 2070–0032; expires 11/30/2004.

EPA ICR No. 1189.09; Identification Listing and Rulemaking Petitions; in 40 CFR parts 260, 261; was approved 11/19/2001; OMB No. 2050–0053; expires 11/30/2004.

EPA ICR No. 1597.04; Reporting and Recording Requirements for the Universal Waste Handlers and Destination Facilities, in 40 CFR part 273; was approved 11/19/2001; OMB No. 2050–0145; expires 11/30/2004.

EPA ICR No. 1445.05; Continuous Release Reporting Regulations (CRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), was approved 11/19/2001; OMB No. 2050–0086; expires 11/30/2004.

EPA ICR No. 1823.02; PFC Emission Reduction Partnership for the Semiconductor Industry, Non rule Related, Memo of Understanding; was approved 11/19/2001; OMB No. 2060–0382; expires 11/30/2004.

EPA ICR No. 0186.09; NESHAP for Vinyl Chloride; in 40 CFR part 61, subpart F; was approved 11/19/2001; OMB No. 2060–0071; expires 11/30/2004.

EPA ICR No. 1702.03; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; in 40 CFR part 85; was approved 11/19/2001; OMB No. 2060–0302; expires 11/30/2004.

EPA ICR No. 1657.04; NESHAP for Total HAP Emissions from the Pulp Paper Production Source Category—Process Operations; in 40 CFR part 63, subpart S; was approved 11/19/2001; OMB No. 2060–0387; expires 11/30/2004.

EPA ICR No. 1973.02; Cooling Water Intake Structures New Facility Final Rule; in 40 CFR parts 122.2 and 122.9 (b), (1), (2), (4), and 40 CFR part 125.83; was approved 11/08/2001; OMB No. 2040–0241; expires 11/30/2004.

EPA ICR No. 1125.03; National Emission Standards for Hazardous Air Pollutants for Beryllium Rocket Motor Firing; in 40 CFR part 61, subpart D; was approved 11/08/2001; OMB No. 2060–0394; expires 11/30/2004.

EPA ICR No. 1686.04; NESHAP for the Secondary Lead Smelter Industry; in 40 CFR part 63, subpart X; was approved 11/08/2001; OMB No. 2060–0296; expires 10/31/2004.

EPA ICR No. 1153.07; NESHAP for Equipment Leaks (Fugitive Emission Sources); in 40 CFR part 61, subpart V; was approved 11/08/2001; OMB No. 2060–0068; expires 10/31/2003.

EPA ICR No. 1904.01; Sun Wise School Program; was approved 11/02/2001; OMB No. 2060–0439; expires 11/30/2003.

EPA ICR No. 1896.01; Disinfectant/Disinfection Byproducts, Chemical, and Radionuclides Rules; in 40 CFR part 141 subpart B; was approved 11/29/2001; OMB No. 2040–0204; expires 11/30/2004.

EPA ICR No. 1230.10; Prevention of Significant Deterioration and Nonattainment Area; in 40 CFR part 51

and 52; was approved 10/29/2001; OMB No. 2060–0303; expires 10/31/2004.

EPA ICR No. 1639.04; National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance; in 40 CFR part 136; was approved 11/27/2001; OMB Number 2040–0180; expires 11/30/2004.

EPA ICR No. 1895.02; Microbial Rules; in 40 CFR part 141 subpart B, and part 142 was approved 11/28/2001; OMB No. 2040–0205; expires 11/30/2004.

EPA ICR No. 2038.01; 2000 Aquatic Animal Production Industry Surveys; in 40 CFR part 451; was approved 11/28/2001; OMB No. 2040–0240; expires 11/30/2004.

EPA ICR No. 0270.40; Public Water System Supervision Program; in 40 CFR parts 141 & 142; was approved 11/28/2001; OMB No. 2040–0090; expires 11/30/2004.

EPA ICR No. 1994.02; Baseline Standards and Best Management Practices for the Coal Mining Point Source Category—Coal Mining Subcategory and Western Alkaline; in 40 CFR Part 434; was approved 11/30/2001; OMB No. 2040–0239; expires 11/30/2004.

EPA ICR No. 1488.05; Superfund Site Evaluation and Hazard Ranking System; was approved 11/26/01; OMB No. 2050–0095; expires 11/30/2004.

EPA ICR No. 1391.06; CWA State Revolving Fund Program; was approved 11/28/2001; OMB No. 2040–0118; expires 11/30/2004.

OMB Withdrawals

EPA ICR No. 1861.02; Energy Star Labeling Program Evaluation; on 10/29/2001 was withdrawn from OMB review.

EPA ICR No. 1503.04; Data Acquisition for Registration; on 11/06/2001 was withdrawn from OMB review.

EPA ICR No. 2031.01; Request for Applications for Critical Use Exemptions from the Phaseout of Methyl Bromide; on 11/26/2001 was withdrawn from OMB review.

EPA ICR No. 0619.09; Modification to Mobile Source Emission Factor Survey; on 11/05/2001 was withdrawn from OMB review.

EPA ICR No. 1965.01; Soil Ingestion Research; on 11/02/2001 was withdrawn from OMB review.

Correction to Previously Published Notice

Vol. 66, No. 241/Friday, December 14, 2001, page 64817

40 CFR number incorrectly reported (40 CFR part 61). Should read as follows:

EPA ICR No. 1446.07; PCB's Consolidated Reporting and Recordkeeping Requirements; in 40 CFR part 761; was approved on 08/29/2001; OMB No. 2070–0112; expires 08/31/2004.

Dated: January 31, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–3360 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards for Municipal Waste Combustors Subpart Ea and Subpart Eb, OMB 2060–0210, expires March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 14, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1506.09 and OMB Control No. 2060–0210, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1506.09. For technical questions about the ICR contact Jonathan Binder at (202) 564–2516 or *binder.jonathan@epa.gov* with the Office of Compliance.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Municipal Waste Combustors Subpart Ea and Subpart Eb, OMB 2060–0210; EPA ICR No. 1506.09; expiring March 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Owners or operators of the affected facilities described must make one-time-only notifications and reports and must keep records as required of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS Subpart Ea and Subpart Eb provide information on the operation of the emissions control devices and compliance with the Municipal Waste Combustor (MWC) organics, MWC metals, MWC acid gases, good combustion practices, and nitrogen oxides. Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to Subpart Eb are required to keep records of the weekly amount of carbon used for carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for mercury. Quarterly reports of excess emissions are required under Subpart Ea, while semi-annual reports of excess emissions are required under Subpart Eb. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

MWCs subject to Subpart Ea maintain a file of these measurements, and retain the file for at least 2 years. For MWCs subject to Subpart Eb all records are required to be maintained at the source for a period of 5 years. All reports are sent to the delegated State, Tribal, or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The

information generated by monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment and achieve continuous compliance with the regulation. The collection of this information is mandatory. 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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001, (66 FR 54514). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 238 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of municipal waste combustors.

Estimated Number of Respondents: 8.

Frequency of Response: One-time, quarterly, semi-annual and annual.

Estimated Total Annual Hour Burden: 11,885 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $132,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1506.09 and OMB Control No. 2060–0210 in any correspondence.

Dated: January 31, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–3359 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7142–8]

RIN 2060–AI52

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of categories of major and area sources.

SUMMARY: This notice publishes revisions to the list of categories of major and area sources of hazardous air pollutants (HAP) emissions. The source category list, which is required under section 112(c) of the Clean Air Act (CAA), constitutes a significant part of EPA's agenda for regulating stationary sources of air toxics emissions. The list was most recently published in the **Federal Register** on January 30, 2001.

This notice meets the requirement in section 112(c)(1) to publish periodically, but at least once every 8 years, a list of all categories of sources reflecting revisions since the initial list was published. Several of the revisions identified in this notice have previously been published in actions associated with proposing and promulgating emission standards for individual source categories, and public comments have been requested in the context of those actions. Some of the revisions in this notice have not been reflected in any previous notices and are being made on the Administrator's own motion, without public comment. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions. This notice does not include any revisions to the schedule for standards provided for by CAA section 112(e).

EFFECTIVE DATE: February 12, 2002.

ADDRESSES: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Noell, U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), Organic Chemicals Group (C504–4), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, facsimile number (919) 541–3470, electronic mail address *noell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket for this action is A–90–49. The docket is an organized file of all the information submitted to or otherwise relied upon by the Agency in the development of this revised list of source categories. The principal purpose of the docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the source category list. The docket is available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *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.

I. What Is the History of the Source Category List?

The CAA requires, under section 112, that EPA list all categories of major sources emitting HAP and such categories of area sources warranting regulation and promulgate national emission standards for hazardous air pollutants (NESHAP) to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in section 112(c), on July 16, 1992 (57 FR 31576), we published a list of 174 categories of major and area sources—referred to as the initial list—for which we would develop emission standards. On December 3, 1993 (58 FR 63941), pursuant to requirements in section 112(e), we published a schedule for the promulgation of emission standards for each of the 174 initially listed source categories.

When we publish notices that affect actions relating to individual source categories, it is important to reflect the resultant changes on the list and schedule. However, we published two separate notices where we listed sources for specific pollutants under section 112(c)(6) on April 10, 1998 (63 FR 17838), and additional area sources under section 112(k) on July 19, 1999 (64 FR 38706). Please refer to these specific notices for those listings. Since we have already listed those sources in previous **Federal Register** notices, we are not relisting them in this notice at this time. On June 4, 1996 (61 FR 28197), we published a notice that referenced all previous list and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. Subsequently, we published four additional notices which updated the list and schedule: February 12, 1998 (63 FR 7155); May 17, 1999 (64 FR 26743); November 18, 1999 (64 FR 63025); and January 30, 2001 (66 FR 8220). You should read the previous notices for information relating to the development of the initial list and schedule and subsequent changes.

II. Why Is EPA Issuing This Notice?

This notice announces all list changes that have occurred since we last updated the list on January 30, 2001 (66 FR 8220). The changes and the affected source categories, are:

Changes to Source Category Names
- Friction Materials Manufacturing

Addition of Source Categories
- Coal- and Oil-Fired Electric Utility Steam Generating Units
- Wet-Formed Fiberglass Mat Production

Deletion of Source Categories
- Asphalt Concrete Manufacturing
- Uranium Hexafluoride
- Sewage Sludge Incineration

Subsumptions of Source Categories
- Cellulose Ethers Production
- Miscellaneous Viscose Processes

Changes to the Scope of a Source Category
- Process Heaters

The source category list and promulgation schedule, updated to include today's changes to the list as well as actions from previous notices, are presented in Table 1. Table 1 also includes **Federal Register** citations for notices related to the source categories (Table 1 omits proposal notices once a rule or rule amendment has been promulgated). Source categories for which revisions have been made in today's notice are annotated in Table 1 for ease in discerning where revisions have been made.

For general descriptions of source categories listed in Table 1, please refer to ''Documentation for Developing the Initial Source Category List'' (EPA–450/3–91–030) and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197, June 4, 1996). For subsequent changes to descriptions of source categories for which a rule has been promulgated, please consult Table 1 for the citation of the **Federal Register** notice that includes the amended definition and corresponding rule applicability.

III. What Are the Revisions EPA Is Making to the Source Category List?

The following sections describe revisions to the source category list since January 30, 2001.

A. Changes to Source Category Names

We are renaming the Friction Products Manufacturing source category to Friction Materials Manufacturing so that the name better describes the source category.

B. Addition of Source Categories

Section 112(n)(1)(A) of the CAA requires the Administrator to determine whether regulation of HAP from electric utility steam generating units is appropriate and necessary. This finding was to be made after the consideration of the results of the study mandated by the same section, reported to Congress in EPA's February 1998 ''Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress.'' The EPA gathered additional information and announced on December 20, 2000 (65 FR 79825) that regulation of HAP emissions from coal- and oil-fired electric utility steam generating units was appropriate and necessary. As a result of this determination, the source category for Coal- and Oil-Fired Electric Utility Steam Generating Units was added to the list of source categories under section 112(c) of the CAA in that December 20, 2000 notice. In today's notice, we are simply updating the source category list to reflect that addition.

Today's notice also updates the source category list to reflect the addition of a new source category called Wet-Formed Fiberglass Mat Production. For further information, you should refer to the proposed preamble for the NESHAP for Wet-Formed Fiberglass Mat Production (65 FR 34277), which serves as the official action for adding that source category.

C. Deletion of Source Categories

The Administrator may, where appropriate, delete categories of sources on the Administrator's own motion or on petition. In today's notice, we are deleting the Asphalt Concrete Manufacturing, Uranium Hexafluoride Production, and Sewage Sludge Incineration source categories on the Administrator's own motion. As discussed in the initial list notice (57 FR 31576), we included these categories on the list because at the time, we believed there were major sources in each category, either because they were major sources in their own right or because of collocation with other sources of HAP. These source categories are being deleted because available data indicate that there are no major sources in any of the source categories.

1. Asphalt Concrete Manufacturing

In today's notice, we are deleting the source category Asphalt Concrete Manufacturing because available data indicate that there are no major sources. This source category was initially listed in July 1992 because at the time, we believed there were major sources in the category. Emissions data, along with emission factors, were used to estimate HAP emissions from eleven asphalt concrete manufacturing plants employing various production processes and different fuels. Emissions of total HAP at individual plants range from 1.5 tons per year (tpy) to 6.4 tpy. In addition, emission factors were used to estimate HAP emissions from a plant with a high annual production of 1.2 million tons of asphalt concrete. We estimate total HAP emissions from that plant to be 6.2 tpy. Based on the above information, we have concluded that no asphalt concrete manufacturing facility has the potential to emit HAP approaching major source levels.

2. Uranium Hexafluoride Production

The Uranium Hexafluoride Production source category was initially listed in July 1992. Information collected since the listing indicates that there is only one facility producing uranium hexafluoride in the United States. We visited the facility and reviewed emissions estimates provided by the facility. We estimate total plantwide emissions of HAP, including emissions from uranium hexafluoride production and fluorine production, to be less than 5 tpy. Therefore, since there are no sources in this category with the potential to emit HAP at a level approaching the major source threshold, we are removing this source category from the list.

3. Sewage Sludge Incineration

The Sewage Sludge Incineration source category was initially listed in July 1992. Sewage sludge incinerators have been reevaluated for emissions of HAP. After evaluation of all emissions information available, including additional testing conducted since the initial listing, we have concluded that the Sewage Sludge Incineration source category does not have any sources with the potential to emit HAP at a level approaching major source levels; therefore, we are removing the Sewage Sludge Incineration source category from the list of source categories under CAA section 112.

D. Subsumptions of Source Categories

Today's notice updates the source category list to reflect the subsumption of seven categories related to cellulose production into two source categories called Cellulose Ethers Production and Miscellaneous Viscose Processes. We are combining the Carboxymethylcellulose Production, Cellulose Ethers Production, and Methylcellulose Production source categories into the Cellulose Ethers Production source category. We are also combining four existing source categories into a new source category called Miscellaneous Viscose Processes. This newly defined source category subsumes the Rayon Production, Cellulose Food Casing Manufacturing, Cellophane Production, and Cellulosic Sponge Manufacturing source categories. For further information, you should refer to the proposed preamble for the Cellulose Products Manufacturing NESHAP (65 FR 52166), which serves as the official action to combine the source categories and to name the newly defined source categories.

E. Changes to the Scope of a Source Category

Today's action serves to redefine the scope of the Process Heaters source category to only include indirect-fired process heaters.

Both direct-fired and indirect-fired process heaters were included in the initial listing of the source category. Direct-fired process heaters are those in which the products of combustion mix with process materials and the combined emissions exit the same stack. By contrast, indirect-fired process heaters are those where the process materials are not mixed with products of combustion and, therefore, the emissions arise solely from products of combustion. We included direct-fired process heaters under other MACT standards for each relevant industry source category since emissions from direct-fired heaters are source and industry specific and, therefore, only indirect-fired process heaters need to be included in the Process Heaters source category.

IV. Is This Action Subject to Judicial Review?

Section 112(e)(4) of the CAA states that, notwithstanding section 307 of the CAA, no action of the Administrator listing a source category or subcategory under section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Section 112(e)(3) states that the determination of priorities for promulgation of standards for the listed source categories is not a rulemaking and is not subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established under section 112(e) shall be subject to review under section 304 of the CAA. Therefore, today's notice is not subject to judicial review.

V. Is EPA Asking for Public Comment?

Prior to issuance of the initial source category list, we published a draft initial list for public comment (56 FR 28548, June 21, 1991). Although we were not required to take public comment on the initial source category list, we believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, we solicit public comments on actions we are contemplating. We have decided, however, that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice. Where we believe it is useful to solicit input on certain actions, we will offer interested parties an opportunity to provide comments on proposed individual emission standards.

VI. Administrative Requirements

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be ''significant'' is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of 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.

The OMB has determined that this action is not significant under terms of Executive Order 12866.

Dated: February 6, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Fuel Combustion:	
Coal- and Oil-fired Electric Utility Steam Generating Units	Added to 112(c) list 12/20/2000 (65FR79825)
Combustion Turbines	11/15/2000
Engine Test Facilities	11/15/2000
Industrial Boilers	11/15/2000
Institutional/Commercial Boilers	11/15/2000
Process Heaters	Redefined Scope as of Today 11/15/2000
Reciprocating Internal Combustion Engines	11/15/2000
Rocket Testing Facilities	11/15/2000
Stationary Internal Combustion Engines	Renamed 64FR63025(N)
Stationary Turbines	Renamed 64FR63025(N)
Non-Ferrous Metals Processing:	
Lead Acid Battery Manufacturing	Deleted 61FR28197(N)
Primary Aluminum Production	11/15/1997 62FR52383(F)
Primary Copper Smelting	11/15/2000 63FR19582(P) 63FR39326(SP)
Primary Lead Smelting	11/15/1997 64FR30194(F)
Primary Magnesium Refining	11/15/2000
Secondary Aluminum Production	11/15/1997 63FR55489(ap) 63FR55491(S) 65FR15689(F)
Secondary Lead Smelting	11/15/1994 60FR32587(F) 61FR27785(A) 61FR65334(A) 62FR32209(A) 63FR45007(A) 64FR4570(A) 64FR69637(A)
Ferrous Metals Processing:	
Coke By-Product Plants	Deleted 66FR8220(N)
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/1992 58FR57898(F) 59FR01922(C)
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/2000 66FR35326(P)
Ferroalloys Production	Renamed 64FR63025(N)
Ferroalloys Production: Silicomanganese and Ferromanganese	11/15/1997 64FR27450(F) 66FR16007(A) 66FR16024(a)
Integrated Iron and Steel Manufacturing	11/15/2000 66FR36836(P)
Iron Foundries	11/15/2000
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted 61FR28197(N)
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted 61FR28197(N)
Steel Foundries	11/15/2000
Steel Pickling—HCl Process	Renamed 64FR63025(N)
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	11/15/1997 64FR33202(F)
Mineral Products Processing:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Alumina Processing	Deleted 66FR8220(N)
Asphalt Concrete Manufacturing	Deleted as of today
Asphalt Processing	11/15/2000
Asphalt Roofing Manufacturing	11/15/2000
Asphalt/Coal Tar Application—Metal Pipes	11/15/2000
Chromium Refractories Production	Renamed 64FR63025(N)
Clay Products Manufacturing	11/15/2000
Lime Manufacturing	11/15/2000
Mineral Wool Production	11/15/1997 64FR29490(F)
Portland Cement Manufacturing	11/15/1997 64FR31897(F)
Refractories Manufacturing	11/15/2000
Taconite Iron Ore Processing	11/15/2000
Wool Fiberglass Manufacturing	11/15/1997 64FR31695(F)
Petroleum and Natural Gas Production and Refining:	
Oil and Natural Gas Production	11/15/1997 64FR32610(F)
Natural Gas Transmission and Storage	11/15/2000 64FR32610(F)
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	Renamed 11/15/1997 66FR8220(N)
Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units	11/15/1997 63FR78890(P)
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/1994 60FR43244(F) 61FR07051(C) 61FR29876(C) 62FR07937(A)
Liquids Distribution:	
Gasoline Distribution (Stage 1)	11/15/1994 59FR42788(N) 59FR64303(F) 60FR07627(C) 60FR32912(C) 60FR43244(A) 60FR57628(C) 60FR62991(S) 61FR07718(A) 61FR58547(N) 62FR09087(A)
Marine Vessel Loading Operations	11/15/1997 60FR48399(F)
Organic Liquids Distribution (Non-Gasoline)	11/15/2000
Surface Coating Processes:	
Aerospace Industries	11/15/1994 60FR45956(F) 61FR04903(C) 61FR66227(C) 63FR15016(A) 63FR46525(A) 65FR3642(a)
Auto and Light Duty Truck (Surface Coating)	11/15/2000
Flat Wood Paneling (Surface Coating)	Renamed 64FR63025(N)
Large Appliance (Surface Coating)	Redefined Scope 11/15/2000 64FR63025(N) 65FR81134(P)
Magnetic Tapes (Surface Coating)	11/15/1994 59FR64580(F)
Manufacture of Paints, Coatings, and Adhesives	11/15/2000
Metal Can (Surface Coating)	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Metal Coil (Surface Coating)	11/15/2000 63FR44616(P)
Metal Furniture (Surface Coating)	11/15/2000
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/2000
Paper and Other Webs (Surface Coating)	11/15/2000 63FR55332(P)
Plastic Parts and Products (Surface Coating)	11/15/2000
Printing, Coating, and Dyeing of Fabrics	11/15/2000
Printing/Publishing (Surface Coating)	11/15/1994 61FR27132(F)
Shipbuilding and Ship Repair (Surface Coating)	11/15/1994 60FR64330(F) 61FR30814(A) 61FR66226(C)
Wood Building Products (Surface Coating)	11/15/2000
Wood Furniture (Surface Coating)	11/15/1994 60FR62930(F) 62FR30257(C) 62FR31361(A) 63FR71376(A)
Waste Treatment and Disposal:	
Hazardous Waste Incineration	11/15/2000 64FR52828(F)
Municipal Landfills	Renamed 11/15/2000 66FR8220(N)
Municipal Solid Waste Landfills	11/15/2000 63FR66672(P)
Off-Site Waste and Recovery Operations	11/15/1994 61FR34140(F) 64FR38950(A)
Publicly Owned Treatment Works (POTW) Renamed Emissions [c]	11/15/1995 66FR8220(N)
Publicly Owned Treatment Works (POTW) [c]	11/15/1995 64FR57572(F)
Sewage Sludge Incineration	Deleted as of today
Site Remediation	11/15/2000
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	Renamed 59FR51913(N)
Agricultural Chemicals Production:	
Pesticide Active Ingredient Production	11/15/1997 64FR33549(F)
4-Chloro-2-Methylphenoxyacetic Acid Production	Subsumed 64FR63025(N)
2,4-D Salts and Esters Production	Subsumed 64FR63025(N)
4,6-Dinitro-o-Cresol Production	Subsumed 64FR63025(N)
Butadiene-Furfural Cotrimer (R–11) Production [d]	Subsumed 64FR63025(N)
Captafol Production [d]	Subsumed 64FR63025(N)
Captan Production [d]	Subsumed 64FR63025(N)
Chloroneb Production	Subsumed 64FR63025(N)
Chlorothalonil Production [d]	Subsumed 64FR63025(N)
Dacthal (tm) Production [d]	Subsumed 64FR63025(N)
Sodium Pentachlorophenate Production	Subsumed 64FR63025(N)
Tordon (tm) Acid Production [d]	Subsumed 64FR63025(N)
Fibers Production Processes:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Acrylic Fibers/Modacrylic Fibers Production	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Spandex Production	11/15/2000 65FR76408(P)
Food and Agriculture Processes:	
Baker's Yeast Manufacturing	Renamed 64FR63025(N)
Manufacturing of Nutritional Yeast	11/15/2000 63FR55812(P) 66FR27876(F)
Solvent Extraction for Vegetable Oil Production	11/15/2000 63FR34251(P) 66FR19006(F)
Vegetable Oil Production	11/15/2000 66FR8220(N)
Pharmaceutical Production Processes:	
Pharmaceuticals Production [d]	11/15/1997 63FR19151(a) 63FR50280(F) 66FR40121(F) 66FR40903(P) 66FR40121(A) 66FR40166(P)
Polymers and Resins Production:	
Acetal Resins Production	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Acrylonitrile-Butadiene-Styrene Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Alkyd Resins Production	11/15/2000
Amino Resins Production	11/15/1997 65FR3275(F)
Boat Manufacturing	Redefined scope 11/15/2000 63FR43842(P) 64FR63025(N) 66FR44218(F)
Butyl Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Cellulose Ethers Production	11/15/2000 65FR52166(P)
Carboxymethylcellulose Production	Subsumed as of today 11/15/2000
Methylcellulose Production	Subsumed as of today 11/15/2000
Epichlorohydrin Elastomers Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Epoxy Resins Production	11/15/1994 60FR12670(F)
Ethylene-Propylene Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Flexible Polyurethane Foam Production	11/15/1997 62FR05074(C) 64FR34853(F)
Hypalon (tm) Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Maleic Anhydride Copolymers Production	11/15/2000
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [d]	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [d]	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Neoprene Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Nitrile Butadiene Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Nitrile Resins Production	11/15/2000 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Non-Nylon Polyamides Production	11/15/1994 60FR12670(F)
Nylon 6 Production	Deleted 63FR7155(N)
Phenolic Resins Production	65FR3275(F)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Polybutadiene Rubber Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polycarbonates Production [d]	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Polyester Resins Production	11/15/2000
Polyether Polyols Production	11/15/1997 64FR29420(F) 64FR31895(C)
Polyethylene Terephthalate Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR30993(A) 62FR37720(A) 63FR9944(C) 63FR15312(A) 63FR67879(N) 64FR11536(A) 64FR30406(A) 64FR30456(N) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polymerized Vinylidene Chloride Production	11/15/2000
Polymethyl Methacrylate Resins Production	11/15/2000
Polystyrene Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S)
Polysulfide Rubber Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polyvinyl Acetate Emulsions Production	11/15/2000
Polyvinyl Alcohol Production	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Polyvinyl Butyral Production	11/15/2000
Polyvinyl Chloride and Copolymers Production	11/15/2000 65FR76958(P)
Reinforced Plastic Composites Production	11/15/2000 66FR40324(P)
Styrene-Acrylonitrile Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Styrene-Butadiene Rubber and Latex Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Production of Inorganic Chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/2000
Antimony Oxides Manufacturing	Promulgation rescheduled; deleted 64FR63025(N)
Carbon Black Production	11/15/2000 65FR76408(N)
Chlorine Production	11/15/2000
Chromium Chemicals Manufacturing	Deleted 61FR28197(N)
Cyanide Chemicals Manufacturing	11/15/2000 65FR76408(P)
Cyanuric Chloride Production	Deleted 63FR7155(N)
Fumed Silica Production	Corrected 11/15/2000 64FR63025(N)
Hydrochloric Acid Production	11/15/2000
Hydrogen Cyanide Production	Subsumed 63FR7155(N)
Hydrogen Fluoride Production	11/15/1997 64FR34853(F) 64FR63702(A) 64FR63779(a)
Phosphate Fertilizers Production	11/15/1997 64FR31358(F)
Phosphoric Acid Manufacturing	11/15/1997 64FR31358(F)
Quaternary Ammonium Compounds Production	Moved 61FR28197(N)
Sodium Cyanide Production	Subsumed 63FR7155(N)
Uranium Hexafluoride Production	Deleted as of today
Production of Organic Chemicals:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Ethylene Processes	11/15/2000 65FR76408(P)
Quaternary Ammonium Compounds Production	11/15/2000
Synthetic Organic Chemical Manufacturing	11/15/1992 59FR19402(F) 59FR29196(A) 59FR32339(N) 59FR48175(C) 59FR53359(S) 59FR54131(S) 60FR05320(A) 60FR18020(A) 60FR18026(A) 60FR63624(C) 61FR31435(A) 61FR07716(A) 61FR43544(N) 61FR64572(A) 62FR02722(A) 63FR67787(A) 64FR20189(C) 65FR3169(a)
Tetrahydrobenzaldehyde Production	Subsumed 63FR26078(F) 64FR63025(N)
Miscellaneous Processes:	
Aerosol Can-Filling Facilities	Promulgation rescheduled; deleted 64FR63025(N)
Benzyltrimethylammonium Chloride Production	11/15/2000
Butadiene Dimers Production	Renamed 61FR28197
Carbonyl Sulfide Production	11/15/2000
Chelating Agents Production	11/15/2000
Chlorinated Paraffins Production [d]	11/15/2000
Chromic Acid Anodizing	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A)
Commercial Dry Cleaning (Perchloroethylene) —Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Commercial Sterilization Facilities	11/15/1994 59FR62585(F) 61FR27785(A) 64FR67789(A) 64FR69637(A)
Decorative Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Dodecanedioic Acid Production	Subsumed 59FR19402(N)
Dry Cleaning (Petroleum Solvent)	Deleted 66FR8220(N)
Ethylidene Norbornene Production [d]	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Explosives Production	11/15/2000
Flexible Polyurethane Foam Fabrication Operations	11/15/2000 66FR41718(P)
Friction Materials Manufacturing	Name Changed as of Today 11/15/2000
Halogenated Solvent Cleaners	11/15/1994 59FR61801(F) 59FR67750(C) 60FR29484(C) 63FR24749(S) 63FR68397(A) 64FR45187(A) 64FR56173(A) 64FR67793(A) 64FR69637(A) 64FR67793(A)
Hard Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Hydrazine Production	11/15/2000
Industrial Cleaning (Perchloroethylene)—Dry-to-dry machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Industrial Process Cooling Towers	11/15/1994 59FR46339(F)
Leather Finishing Operations	11/15/2000 63FR58702(P)
Leather Tanning and Finishing Operations	Renamed 66FR8220(N)
Miscellaneous Viscose Processes	Added as of today 11/15/2000 65FR52166(P)
Cellophane Production	Subsumed as of today 11/15/2000 65FR52166(P)
Cellulose Food Casing Manufacturing	Subsumed as of today 11/15/2000 65FR52166(P)
Cellulosic Sponge Manufacturing	Subsumed as of today Added 11/15/2000 64FR63025 65FR52166(P)
Rayon Production	Subsumed as of today 11/15/2000 65FR52166(P)
OBPA/1,3-Diisocyanate Production [d]	11/15/2000
Paint Stripper Users	Renamed 64FR63025(N)
Paint Stripping Operations	11/15/2000
Photographic Chemicals Production	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Phthalate Plasticizers Production	11/15/2000
Plywood and Composite Wood Products	11/15/2000
Plywood/Particle Board Manufacturing	Renamed 64FR63025(N)
Polyether Polyols Production	Moved 61FR28197(N)
Pulp and Paper Production	Promulgation rescheduled 11/15/2000 64FR63025 63FR18504(F) 63FR42238(C) 63FR49455(A) 63FR71385(A) 64FR17555(A) 65FR3907(a) 65FR80755(F) 66FR24268(C)
Rocket Engine Test Firing	Moved and renamed 64FR63025(N)
Rubber Chemicals Manufacturing	11/15/2000
Rubber Tire Manufacturing	11/15/2000 63FR62414(P)
Semiconductor Manufacturing	11/15/2000
Symmetrical Tetrachloropyridine Production[d]	11/15/2000
Tetrahydrobenzaldehyde Production	Moved 64FR63025(N)
Tire Production	Renamed 64FR63025(N)
Wet-Formed Fiberglass Mat Production	Added as of today 11/15/2000 65FR34277(P)
Wood Treatment	Deleted 61FR28197(N)
Categories of Area Sources:	
Asbestos Processing	Deleted 60FR61550
Chromic Acid Anodizing	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Commercial Dry Cleaning (Perchloroethylene) -Dry-to-Dry Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A) 64FR69637(A)
Commercial Dry Cleaning (Perchloroethylene) -Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A) 64FR69637(A)
Commercial Sterilization Facilities	11/15/1994 59FR62585(F) 61FR27785(A) 64FR67789(A) 64FR69637(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Decorative Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Halogenated Solvent Cleaners	11/15/1994 59FR61801(F) 59FR67750(C) 60FR29484(C) 63FR24749(S) 63FR68397(A) 64FR45187(A) 64FR56173(A) 64FR67793(A) 64FR69637(A) 64FR67793(A)
Hard Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Hazardous Waste Incineration	11/15/2000 64FR52828(F)
Portland Cement Production	11/15/1997 64FR31897(F)
Secondary Aluminum Production	11/15/1997 63FR55489(ap) 63FR55491(S) 65FR15689(F)
Secondary Lead Smelting	11/15/1997 60FR32587(F) 61FR27785(A) 61FR65334(A) 62FR32209(A) 64FR69637(A)

[a] Only sources within any category located at a major source shall be subject to emission standards under CAA section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] This schedule does not establish the order in which the rules for particular source categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to CAA section 112(d) for a given source category be promulgated by the specified date.

The markings in the ''Statutory Promulgation Date/**Federal Register** Citation'' column of Table 1 denote the following:

(A): final amendment to a final rulemaking action

(a): proposed amendment to a final rulemaking action

(C): correction (or clarification) published subsequent to a proposed or final rulemaking action

(F): final rulemaking action

(N): notice to announce general information, such as an Agency decision, availability of new data, administrative updates, etc.

(P): proposed rulemaking action

(ap): advance notice of proposed rulemaking action

(R): reopening of a proposed action for public comment

(S): announcement of a stay, or partial stay, of the rule requirements

Moved: the source category is relocated to a more appropriate industry group

Subsumed: the source category is included within the definition of another listed category and therefore is no longer listed as a separate source category

Renamed: the title of this source category is changed to a more appropriate title

Deleted: the source category is removed from the source category list

[c] The Publicly Owned Treatment Works (POTW) Emissions source category had a statutory deadline for regulatory promulgation of November 15, 1995, as established by CAA section 112(e)(5). However, for purposes of determining the 18-month period applicable to the POTW source category under section 112(j)(2), the promulgation deadline was November 15, 1997. This latter date is consistent with the section 112(e) schedule for the promulgation of emissions standards, as published in the **Federal Register** on December 3, 1993 (58 FR 63941).

[d] Equipment handling specific chemicals for these categories or subsets of these categories is subject to a negotiated standard for equipment leaks contained in the Hazardous Organic NESHAP (HON), which was promulgated on April 22, 1994. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in Section XX.XO(c) of the March 6, 1991 **Federal Register** notice (56 FR 9315).

[FR Doc. 02–3348 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7141–5]

Notice of Open Meeting; Environmental Financial Advisory Board; March 4–6, 2002

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold two open meetings on March 4–6, 2002. Both meetings will be held at the National Press Club, 14th and F Streets, NW., Washington, DC, 13th Floor.

On Monday, March 4, 2002 EFAB's Cost Effective Environmental Management Workgroup (CEM) will hold a Workshop on the Governmental Accounting Standards Board Statement No. 34 (GASB 34). The meeting will be held in the Zenger Room and will begin at 9 a.m. and end at approximately 3 p.m.

The purposes of the workshop are to: (1) Gain a better understanding of GASB 34 among EFAB members and EPA staff; (2) assess how various stakeholders might be affected by implementation of the standard and examine its implications; and (3) identify possible recommendations for EFAB to make to EPA with respect to its role and any action it may take. The meeting will consist of a group of informed panelists from the Government Accounting Standards Board, public utilities, EPA, as well as the financial services industry, who will share their perspectives on GASB 34. Information from this meeting will help the Board develop a report with advice and recommendations to EPA.

On March 5–6, 2002 a meeting of the full Board will be held in the Holeman Lounge. The Tuesday, March 5 session will run from 8:30 a.m. to 5 p.m. and the Wednesday, March 6 session will begin at 8 a.m. and end at 11 a.m.

The purposes of this meeting are to: (1) Hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities; and (2) discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: Stewardship financing, cost-effective environmental management, international initiatives, superfund and brownfields initiatives, and public finance issues.

Both meetings are open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: February 4, 2002.

Joseph Dillon,

Comptroller.

[FR Doc. 02–3358 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–1]

Paying for Water Quality: Managing Funding Programs To Achieve the Greatest Environmental Benefits; a Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency will hold a public workshop on March 14–15, 2002, to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit.

DATES: The workshop will be held on March 14–15, 2002.

ADDRESSES: The workshop will be held at the Environmental Protection Agency, EPA East Building, 1201 Constitution Avenue, NW., Washington, DC 20004, in the EPA Hearing Room, Room 1153.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*

Registration: Though the workshop is free, registration is requested for planning purposes. Please send your name, title, affiliation, address, phone number, fax, and email to Nikki Cleaveland at Northbridge Environmental, by fax, 202–625–0461, or by email, *ncleaveland@nbenvironmental.com.*

SUPPLEMENTARY INFORMATION: EPA will convene this public workshop, Paying for Water Quality: Managing Funding Programs to Achieve the Greatest Environmental Benefits, to discuss the current status of water quality funding in the United States, provide an overview of funding programs and illustrate their use through case studies by practitioners from around the country. The Committee on Appropriations, in House Report 107–159, identified a range of issues affecting water quality. The Committee particularly focused on issues concerning nonpoint source pollution. It noted that ''septic system repair and management projects and other nonpoint source pollution prevention and control measures, which can produce substantial benefits of water quality protection, are not eligible for SRF funding in most of the states.'' It also noted that many recipients of federal funding have not instituted user fees to provide for long-term maintenance of infrastructure.

To address these problems, EPA will hold a workshop to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit. The agenda will include topics such as an overview of the Clean Water State Revolving Fund program, the role of other federal water quality funding programs, funding decentralized wastewater systems and nonpoint source projects, exploring the use of environmental outcomes and affordability studies, environmental performance tracking, and efficient wastewater management. Invited to the workshop will be representatives from the State/EPA SRF Workgroup, the Environmental Council of the States, Environmental Finance Centers, centralized and decentralized wastewater and nonpoint source stakeholder groups and any member of the public who wishes to attend. Participants will have the opportunity to openly discuss present concerns and possible solutions.

Dated: February 6, 2002.

Richard T. Kuhlman,

Director, Municipal Support Division, Office of Wastewater Management.

[FR Doc. 02–3364 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–7]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency (''EPA'') is hereby providing notice of a proposed administrative *de*

minimis settlement concerning the Operating Industries, Inc. Landfill Superfund Site in Monterey Park, California (the ''OII Site''). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 10 settling parties, 9 of which have a limited ability to pay, for the OII Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by the California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $284,047 toward OII Site response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before March 14, 2002.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 01–13. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montebello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Eric A. Esler, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: *esler.eric@epa.gov*; Tel: (415) 972–3947.

Dated: January 30, 2002.

Jane Diamond,

Acting Director, Superfund Division, EPA Region IX.

[FR Doc. 02–3363 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting, Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 14, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 10, 2002 (Open and Closed)

B. Reports

- Report on Corporate Approvals
- Status Report on Approval of Loans to Designated Parties Rule
- OMB Budget Proposal
- Trends in Debt Issuances

*Closed**

- OSMO Report

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: February 8, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–3560 Filed 2–8–02; 3:54 pm]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas, (FEMA–1400–DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 24, 2002:

Craighead, Greene, Independence, and White Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3316 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1400–DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: January 30, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 30, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3317 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1400-DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 24, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms and flooding beginning on December 15, 2001, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Ashley, Clay, Cleburne, Columbia, Crittenden, Franklin, Jackson, Lincoln, Little River, Logan, Monroe, Poinsett, Prairie, Scott, Stone, and Woodruff Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3318 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from a severe winter ice storm on January 30, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency

to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kay, Kingfisher, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Roger Mills, Texas, Washington, Washita, Woods, and Woodward Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under Public Assistance at 75 percent Federal funding.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3315 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Application and Reporting Requirements to support projects under the Adoption Opportunities Program.

OMB No.: New Request.

Description: The major efforts mandated by the authorizing Adoption Opportunities program legislation, section 205 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, (Pub. L. 95–266), as amended are:

(a) The development and implementation of a national adoption and foster care data gathering and analysis system;

(b) The development and implementation of a national adoption information exchange system;

(c) The development and implementation of an adoption training and technical assistance program;

(d) Increasing services in support of the placement in adoptive families of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families;

(e) Increasing post-legal adoption services for families who have adopted children with special needs;

(f) Studying the nature, scope, and effects of the placement of children in kinship care arrangements, pre-adoptive, or adoptive homes;

(g) Studying the efficacy of States contracting with public or private nonprofit agencies (including community-based and other organizations);

(h) Consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the DHHS relating to adoption;

(i) Maintain a National Resource Center for Special Needs Adoption; and

(j) Provide for the provision of programs aimed at increasing the number of minority children (who are in foster care and have the goal of adoption) placed in adoptive families, with a special emphasis on recruitment of minority families.

In these areas, research and demonstration grants are awarded through a competitive process to States, local government entities, federally recognized Indian Tribes and tribal organizations, colleges and universities, public or private nonprofit licensed child welfare or adoption agencies, adoption exchanges and community-based organizations with experience in working with minority populations.

Each of these areas is addressed each year, as new awards or as continuations of awards from previous years' competitions. Over time, the projects have demonstrated that improvements in placing children with adoptive families are achieved when permanent plans are made and carried out very early in the placement; when there are sufficiently trained and experienced staff; and when there are resources available and administrative commitments to adoption and to coordinated community-based efforts.

Respondents: Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
EZ Form	80	1	20	1600
Estimated Total Annual Burden Hours				1,525 hours

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by February 28, 2002. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.dhhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by February 28, 2002: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paper Reduction Project, 725 17th Street, NW., Washington, DC 20503.

Dated: February 5, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3352 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community Based Family Resource and Support Program

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Family Resource and Support Grants (CBFRS), as set forth in Title II of Public Law 104–235, Child Abuse Prevention and Treatment Act Amendments of 1996, and in the process of reauthorization, provides direction to the States and Territories to accomplish the purposes of (1) supporting State efforts to develop, operate, expand and enhance a network of community-based, prevention focused, family resource and support programs that coordinate resources among existing human service organizations within the State; and (2) fostering an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in Public Law 104–235 at sections 202(1)(A); 202(q)(B); 203(b)(1)(B); 205; 207; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2080
Annual Report	52	1	24	1248
Estimated Total Annual Burden Hours				3328

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3349 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Subject for OMB Review; Comment Request

Title: Evaluation of the Early Head Start Fatherhood Demonstration.

OMB No.: New Collection.

Description: ACYF, in partnership with the Office of Child Support Enforcement (OCSE), recently funded 21 Early Head Start grantees to develop and implement creative practices to increase the involvement of fathers in their Early Head Start program and in the lives of their children. This submission requests approval to conduct the survey of demonstration staff and to collect father participation data from the demonstration programs.

Respondents: To reduce the burden of demonstration staff, the survey will be configured in four versions. The Director Version will be completed by the Early Head Start program directors. The Father Coordinator Version will be completed by the staff member responsible for father activities. The Family Specialist Version will be completed by the staff member who works most closely with the Early Head Start families in the home. The Teacher Version will be completed by the staff member working with families of children participating in the Early Head Start child care programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
"4 Versions"	76	2	.296	45
Estimated Total Annual Burden Hours				45

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3350 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: April 2002 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	47,000	1	0.0246	1136
Estimated Total Annual Burden Hours				1136

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 5, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3351 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Effective and Innovative Practices in Child Abuse and Neglect Prevention.

OMB No.: New collection.

Description: With increasing understanding and recognition of the individual and family risk factors that increase the likelihood of child maltreatment, particularly since the 1990s, the role and importance of prevention has been vigorously promoted. The development, funding, and implementation of programs and initiatives with a specific focus on the prevention of child maltreatment, as a consequence, has blossomed.

Child abuse and neglect prevention today includes a broad spectrum of programs and services, including parent education, home visitation, respite care, support groups, mentoring, child personal safety education, family resource centers, media campaigns, and policy advocacy campaigns. Programs may target the general population with the goal of facilitating prevention through awareness, and/or may target specific populations at risk for child abuse/neglect with the goal of ameliorating the factors placing them at risk. However, the precise nature of these efforts—and their effectiveness—is not yet well understood, and information has not been systematically documented. As programs have proliferated in both type and number, the need for information on program effectiveness becomes more acute.

Data collection for this project will rely on a nomination process that will identify programs and initiatives operating around the country in two major categories, including (1) Effective programs, which demonstrate or report positive prevention outcomes using experimental or quasi-experimental research methods and (2) Innovative programs, which have overcome a critical challenge or obstacle using a particularly creative method or approach. By identifying and showcasing effective and innovative practices, this project will disseminate critical information to local jurisdictions that are making decisions about allocating and/or targeting resources for program development and implementation.

Respondents: The universe of potential nominations consists of the child abuse and neglect professional community in its entirety, which includes practitioners, service providers, policy makers in state and local agencies, researchers, advocates, and other affiliated parties. A nomination instrument has been designed, with input from a diverse group of experts, that specifies rules and provides detailed guidance on procedures for submission.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Track 1 Nominations: Effective Programs	10–30	1	6	60–180
Track II Nominations: Innovative Programs	150–200	1	4	600–800
Estimated Total Annual Burden Hours				660–980

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3353 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01B–0431]

International Conference on Harmonisation; Draft Recommendations for the Revision of the Permitted Daily Exposures for Two Solvents, N-Methylpyrrolidone and Tetrahydrofuran, According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft recommendations for the revision of the permitted daily exposures (PDE) for two solvents, n-methylpyrrolidone (NMP) and tetrahydrofuran (THF), according to the maintenance procedures for guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The draft recommendations were prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This document also describes procedures for proposing future revisions to the PDE.

DATES: Submit written or electronic comments on the draft recommendations by March 14, 2002.

ADDRESSES: Submit written comments on the draft recommendations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of these draft recommendations to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to documents and maintenance procedures.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–827–2120.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFG–1),Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0865.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (65 FR 56468, September 19, 2000), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of December 24, 1997 (62 FR 67377), FDA published the ICH guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The guidance makes recommendations as to what amounts of residual solvents are considered safe in pharmaceuticals. The guidance recommends use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents. Upon issuance in 1997, the text and appendix 1 of the guidance contained several tables and a list of solvents categorizing residual solvents by toxicity, classes 1 through 3, with class 1 being the most toxic. The Quality Expert Working Group (EWG) agreed that the PDE could be modified if reliable and relevant toxicity data were brought to the attention of the group and that the modified PDE would result in a revision of the tables and list.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance EWG (Q3C EWG). The agreement provided for the revisitation of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided that new solvents and PDEs could be added to the tables and list based on adequate toxicity data. This notice announces the availability of draft recommendations for the revision of the PDE for NMP and THF according to the Q3C maintenance procedures. It also briefly describes the process for proposing future revisions to the PDE.

II. Draft Recommendations to Revise the Tables and List

In July of 2000, the ICH Steering Committee agreed that draft proposals and recommendations to revise the PDE for the solvents NMP and THF should be made available for public comment. The draft recommendations are the product of the Q3C EWG review of new data.

A. N-Methylpyrrolidone (NMP)

The Q3C EWG received new toxicity data for the solvent NMP in late 1999. The data had been provided to FDA by the NMP producers group, who had proposed moving NMP from class 2 to class 3. The data resulted from a 2-year chronic feeding study in rats performed by E.I. Dupont de Nemours & Co (unpublished data). The data were sent to the members of the Q3C EWG for their analysis. These data appeared to be the best available upon which to make a recommendation to the ICH Steering Committee regarding a change in the status of NMP. At the last ICH meeting, February 28 to March 2, 2000, the ICH Steering Committee was briefed on the results of the EWG's analysis. The recommendation was to keep NMP in class 2 and to reduce the PDE. The analysis and the draft recommendation are available for review at http://www.fda.gov/cder/audiences/iact/iachome.htm. They are also available from the Division of Drug Information (HFD–240); address above.

B. Tetrahydrofuran (THF)

The Q3C EWG reviewed new toxicity data for the solvent THF. The data were published by the U.S. National Toxicology Program and consisted of data from several mutagenicity studies and two carcinogenicity studies in rodents via the inhalational route of administration. Information was sent to the members of the Q3C EWG for their analysis. At the last ICH meeting, February 28 to March 2, 2000, the ICH Steering Committee was briefed on the results of the Q3C EWG's analysis. The recommendation was to move THF from class 3 into class 2. The analysis and the draft recommendation are available for review at http://www.fda.gov/cder/audiences/iact/iachome.htm. They are also available from the Division of Drug Information (HFD–240) (address above).

The agency is interested in comments on the draft recommendations regarding the classification of NMP and THF. Comments about the draft recommendations will be considered by FDA and the Q3C EWG.

III. Process for Proposing Future Revisions

In November 2000, the ICH Steering Committee agreed to formalize the maintenance procedures for the guidance entitled ''Q3C Impurities: Residual Solvents.'' The maintenance procedures include multiple ways to establish a PDE for a new solvent or to revise a PDE for an already classified solvent. A proposal with supporting information can be submitted to the ICH Secretariat, to the regulatory agency via the public docket, or to an ICH-involved scientist in an agency or in a pharmaceutical company to submit to the ICH Secretariat. The maintenance procedures state that this information should be based on significant toxicity data from studies such as genotoxicity studies, repeat-dose studies, reproductive toxicity studies, and/or other relevant toxicology studies. Single-dose toxicity data alone are not sufficient. The toxicity data should be of good laboratory practice quality and sufficient to calculate a PDE for a new solvent that will place the new solvent into a toxicity class.

The details of the ICH Q3C maintenance procedures are available on the Internet at http://www.fda.gov/cder/audiences/iact/iachome.htm.

IV. Procedural Changes to Facilitate the Maintenance Process

To facilitate the maintenance process, FDA has decided to delink the tables and list from the Q3C guidance and create a stand alone guidance entitled ''Q3C: Tables and List.'' Creating a stand alone document will enable the agency to update the tables and list when ICH endorses a recommendation to recategorize, remove, or add solvents without revising the Q3C guidance. In addition, the 1997 guidance has been reformatted consistent with FDA's good guidance practices regulation (21 CFR 10.115). Both the reformatted Q3C guidance and the delinked tables and list are available on the agency's Web sites.

The availability of draft and final recommendations for revisions of PDEs and classifications will be announced through a notice in the **Federal Register**. In addition, an FDA Web site at http://www.fda.gov/cder/audiences/iact/iachome.htm details the maintenance procedures, provides contact information, and allows the dissemination of the revised information as quickly as possible. In the future, notices in the **Federal Register** announcing proposals and draft and final recommendations to change the list will send the reader to the Web site for details.

The Q3C EWG's draft recommendations for the two solvents will, when finalized, represent the agency's current thinking on this topic. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the recommendations to change the list by March 14, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft recommendations and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the Q3C documents at http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/guidelines.htm. Information on the Q3C maintenance process as well as proposals, data analysis, and draft and final recommendations for revisions to the tables and list are being made available at http://www.fda.gov/cder/audiences/iact/iachome.htm. The electronic address for submitting comments to Dockets Management Branch is http://www.fda.gov/dockets/ecomments.

Dated: February 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–3388 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Peripheral and Central Nervous System Drugs Advisory Committee scheduled for February 15, 2002. The meeting was announced in the **Federal Register** of January 22, 2002 (67 FR 2891 to 2892).

FOR FURTHER INFORMATION CONTACT: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301 827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543.

Dated: February 6, 2002.

Bonnie H. Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–3372 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0577]

Medical Devices; Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA.'' This draft guidance will serve as a special control for cutaneous carbon dioxide ($PcCO_2$) and cutaneous oxygen (PcO_2) monitor devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these device types. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by May 13, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document describes a means by which cutaneous carbon dioxide ($PcCO_2$) and cutaneous oxygen (PcO_2) monitor devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate carbon dioxide ($PcCO_2$) or oxygen (PcO_2) monitor device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO2) Monitors; Draft Guidance for Industry and FDA.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800 –899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1335) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access.

Updated on a regular basis, the CDRH Web site includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written or electronic comments on the draft guidance by May 13, 2002. Submit two copies of any comments, except individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 29, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–3280 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0049]

Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees.'' This draft document is intended to provide guidance for industry, FDA staff (including special Government employees (SGEs), and other interested stakeholders concerning disclosure of financial interests for which FDA advisory committee SGEs have received conflict of interest waivers. This draft guidance describes a new policy of disclosing specific information concerning the financial interests that give rise to the waiver of a conflict of interest.

DATES: Submit written or electronic comments by March 14, 2002, to ensure adequate consideration in preparation of the final guidance document. Comments on this guidance may be submitted at any time.

ADDRESSES: Submit written comments or requests for copies of the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION:

I. Background

Two separate statutes govern whether FDA advisory committee SGEs are prohibited from participating in a particular meeting because of a conflict of interest with the work the committee is to perform: (1) Section 505(n)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(n)(4)), which is applicable to FDA SGEs working on advisory committees concerning a clinical investigation of a drug or approval for marketing of a drug or biologic; and (2) 18 U.S.C. 208, which is applicable to all Federal Government employees, including SGEs. Both statutes provide for waivers of conflicts of interest under certain conditions. Both statutes also provide for public disclosure of any conflict of interest for which a waiver has been granted. The regulation in 18 U.S.C. 208 provides for disclosure of waiver information upon request but permits agencies to redact any information that would be exempt under the Freedom of Information Act, 5 U.S.C. 552. In addition, section 505(n)(4) of the act requires SGEs to publicly disclose all conflicts of interest.

The Office of Government Ethics (OGE) has concluded that 18 U.S.C. 208 grants agencies discretion in disclosing information under 18 U.S.C. 208 where there is no foreseeable harm that will be caused by the disclosure. Similarly, the Office of Legal Counsel (OLC), Department of Justice, has concluded that FDA has discretion under section 505(n)(4) of the act to tailor the scope of the disclosure to achieve the statute's goal. FDA may weigh the competing public interests at stake. For example, the statute does not intend that the disclosure be so intrusive or onerous as to make many individuals unwilling to serve on advisory committees.

In making a decision concerning how much information to disclose in any given case, FDA has always had to balance the following competing public interests: (1) Providing as much information to the public as possible about the qualifications and abilities of the SGEs involved in the advisory committee process so that individuals may weigh the advice, (2) protecting the reasonable privacy expectations of the SGEs in their personal financial affairs, and (3) protecting FDA's interest in being able to attract sufficient expertise to the committee to provide the most reliable advice.

In the past, FDA has struck a balance between these interests by disclosing the names of individual SGEs who had received waivers and whether the waiver was granted under 18 U.S.C. 208 or section 505(n)(4) of the act, without disclosing any details about the actual financial interest at stake. In the interest of increasing transparency, FDA is now proposing to strike a different balance by disclosing more details. This disclosure, of course, will provide the public with more information concerning the financial interests of the SGEs participating, but it will also entail additional exposure of what may be private financial interests of the SGEs.

II. The Proposed New Procedures

FDA is proposing that, for advisory committee meetings to consider particular matters relating to particular products, additional disclosure of certain details concerning conflicts of interest that have been waived is warranted. In the interest of uniformity, FDA is further proposing to provide for the same degree of disclosure for waivers granted under either 18 U.S.C. 208 or section 505(n)(4) of the act for all centers and will follow similar procedures for both. With regard to committees considering general matters, see the discussion in section III of this document.

The reasons why FDA is proposing this change are twofold. First, FDA recently surveyed SGEs as to whether they were willing to provide greater public disclosure of financial interests giving rise to conflicts of interest for which waivers are received. FDA sent a detailed questionnaire to all SGEs asking for their opinion on whether

additional disclosure would be advisable. The survey and its tabulated results can be obtained by sending an electronic request to the Dockets Management Branch (address above). The results of that survey showed that, in general, SGEs were willing to tolerate greater disclosure of the financial interests than FDA had been providing.

Second, OLC concluded that section 505(n)(4) of the act required meaningful public disclosure that will adequately enable a reasonable person to understand the nature of the conflict and the degree to which it could be expected to influence the recommendations the SGE will make.

III. General Matters Waivers Excluded

Unlike advisory committee meetings to consider particular matters relating to particular products, committee meetings to consider more general matters do not have a unique impact on any personal or imputed financial interests. Such matters are likely to affect classes of similarly situated products and manufacturers to the same extent. Matters of such general applicability give no particular advantage to any individual manufacturer. Therefore, it is recognized that participation in committee meetings to consider general matters poses less risk of a conflict of interest. For that reason, FDA will continue to address committees considering general matters in a way that reflects these inherent differences. FDA will continue its global screening process for each general matter meeting, but in the public's interest of time and utility, it will read an abbreviated statement concerning conflicts of interest.

IV. Significance of Guidance

The draft guidance entitled ''Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees'' is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

V. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance to ensure adequate consideration in preparation of the final guidance document by March 14, 2002. However, interested persons may submit written or electronic comments at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at http://www.fda.gov/oc/guidance/advisorycommittee.html.

Dated: February 5, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–3279 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Cancellation of a Fiscal Year (FY) 1999 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Cancellation of future application receipt dates under SAMHSA/CSAT Comprehensive Community Treatment Program (PA 99–050).

SUMMARY: This notice is to inform the public that the SAMHSA/CSAT program announcement, PA 99–050, Comprehensive Community Treatment Program, is being cancelled. Effective immediately, no new applications will be received, reviewed, or funded under this announcement.

A notice of funding opportunities under the Comprehensive Community Treatment Program was published in the **Federal Register** on March 8, 1999 (Vol. 64, Number 44, pages 11027–11031). Subsequent modification/clarification notices for this program were published in the **Federal Register** on December 13, 1999, and on April 27, 2001. This cancellation notice applies to both the original funding opportunity and to the subsequent modification/clarification notices.

Information related to this notice may be obtained from: Tom Edwards, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Tele: 301–443–8453, e-mail: *tedwards@samhsa.gov.*

Dated: February 6, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–3389 Filed 2–11–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada)

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; BLM public lands disposal and acquisition processes; fire rehabilitation projects progress reports; discussion of a recreation fee demonstration program for Sand Mountain; review and RAC recommendations on the Walker River Basin EIS; and other topics the council may raise.

DATES AND TIMES: The RAC will meet on Thursday, March 28, 2002, from 9 a.m. to 5 p.m., and Friday, March 29, 2002, from 8 a.m. to 3 p.m., at the BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada. All meetings are open to the public. A general public comment period will be held on Thursday, March 28, 2002, at 4 p.m.

A detailed agenda will be available on the internet by March 7, 2002, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Mark Struble, Carson

City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 02–3313 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Watershed Cooperative Agreement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of funds for the Watershed Cooperative Agreement Program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is announcing its intent to solicit applications from eligible, not-for-profit candidates for funding under the Watershed Cooperative Agreement Program to undertake local acid mine drainage reclamation projects.

DATES: Applications for the cooperative agreements should be submitted to the appropriate individual listed under **ADDRESSES AND FURTHER INFORMATION** starting February 12, 2002. Applications will be accepted until all available funds have been awarded.

ADDRESSES AND FURTHER INFORMATION: Requests for an application package, which includes further information on the program, the application forms and evaluation criteria, should be directed to the appropriate Appalachian Clean Streams Coordinator: *Alabama:* Jeannie O'Dell, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, AL 35209, Telephone 205–290–7282, ext. 21; *Illinois:* Ken Foit, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext. 229; *Indiana:* Michael Kalagian, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext. 234; *Iowa:* Perry Pursell, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext. 108; *Kentucky:* Dave Beam, Lexington Field Office, 2675 Regency Road, Lexington, KY 40503, Telephone 859–260–8400 ext. 241; *Maryland:* Peter Hartman, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone 412–937–2905; *Missouri:* Perry Pursell, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext. 108; *Ohio:* Max Luehrs, Columbus Area Office, 4480 Refugee Road, Suite 201, Columbus, OH 43232, Telephone 614–866–0578 ext. 110; *Oklahoma:* Daniel Trout, Tulsa Field Office, 5100 East Skelly Drive S–550, Tulsa, OK 74135, Telephone 918–581–6431 ext. 25; *Pennsylvania:* David Hamilton, Harrisburg Field Office, 415 Market Street, Suite 3, Harrisburg, PA 17101, Telephone 717–782–2285 ext. 15; *Tennessee:* Danny Ellis, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, Telephone 865–545–4103 ext. 147; *Virginia:* Ronnie Vicars, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, VA 24219, Telephone 276–523–0024 ext. 33; *West Virginia:* Rick Buckley, Charleston Field Office, 1027 Virginia Street East, Charleston, WV 25301, Telephone 304–347–7162 ext. 3024.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2002, OSM expects to award up to 2.7 million dollars to eligible not-for-profit groups to undertake actual construction projects to clean up streams impacted by acid mine drainage. The maximum award amount for each cooperative agreement normally will be $100,000. The cooperative agreements will have a performance period of two years. The funds primarily are to be used for the construction phase of the project; however, any cost (administrative or construction) associated with the completion of the project is allowable. The requested OSM funding should be the final amount necessary to complete the project. There must be demonstrated public support for the project.

Eligible applicants are not-for-profit, established organizations with IRS 501(c)(3) status. Applicants must have other partners, contributing either the funding or in-kind services needed to complete the project.

Projects in the following States are eligible: Alabama, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia and West Virginia. Projects must meet eligibility criteria for coal projects outlined in Section 404 of the Surface Mining Control and Reclamation Act of 1977:

> Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes * * * and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act [August 3, 1977], and for which there is no continuing reclamation responsibility under State or other Federal laws.

The project must produce tangible results, e.g., fishery restored, stream miles improved, educational and community benefits, pollutants removed from the streams. There must be a plan to address any ongoing operation/maintenance considerations.

Two copies of a complete application should be submitted to the appropriate Appalachian Clean Streams Coordinator identified under **ADDRESSES** and **FURTHER INFORMATION**. Awards are subject to the availability of funds. Applications will receive technical and financial management reviews.

Dated: January 15, 2002.

Glenda Owens,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 02–3338 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–004]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: February 20, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–413 and 731–TA–913–916 and 918 (Final)(Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 8, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–3484 Filed 2–8–02; 11:29 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX PROGRAM).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 2002.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins on or after April 7, 2002.

Pay grade	Monthly rate
(1) Commissioned Officers	
01–10	$14,654
0–9	14,028
0–8	12,975
0–7	11,792
0–6	9,944
0–5	8,343
0–4	7,042
0–3	5,571
0–2	4,384
0–1	3,289
(2) Commissionoed Officers With Over 4 Years Active Duty As An Enlisted Member or Warrant Officer	
0–3E	6,450
0–2E	5,180
0–1E	4,359
(3) Warrant Officers	
W–5	7,282
W–4	6,394
W–3	5,281
W–2	4,581
W–1	3,806
(4) Enlisted Personnel	
E–9	5,972
E–8	4,957
E–7	4,379
E–6	3,806
E–5	3,166
E–4	2,648
E–3	2,337
E–2	2,242
E–1	2,025

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on February 5, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–3340 Filed 2–11–02; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 75—Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.

2. *Current OMB approval number:* 3150–0055.

3. *How often the collection is required:* Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur. Nuclear material accounting and control information is submitted in accordance with specified instructions.

4. *Who is required or asked to report:* All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

5. *The number of annual respondents:* 6. One reporting and recordkeeping and five others recordkeeping only. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the U.S. State system (Nuclear Materials Management and Safeguards System).

6. *The number of hours needed annually to complete the requirement or request:* 2,400 (.2 hours for reporting and 2,400 hours for recordkeeping).

7. *Abstract:* 10 CFR part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one NRC-licensed facility pursuant to 10 CFR 75.41.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–3366 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 100, ''Appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants.''

2. *Current OMB approval number:* 3150–0093.

3. *How often the collection is required:* As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power and test reactors constructed and licensed in accordance with 10 CFR Parts 50 and 52 and the Atomic Energy Act of 1954, as amended.

4. *Who is required or asked to report:* Applicants and licensees for nuclear power and test reactors.

5. *The number of annual respondents:* 1.

6. *The number of hours needed annually to complete the requirement or request:* 9,000.

7. *Abstract:* 10 CFR part 100, ''Reactor Site Criteria,'' establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR parts 50 or 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. Non-seismic siting criteria must also be evaluated. Non-seismic siting criteria include such factors as population density, the proximity of man-related hazards, and site atmospheric dispersion characteristics. NRC uses the information required by 10 CFR part 100 to evaluate whether natural phenomena and potential man-made hazards will be appropriately accounted for in the design of nuclear power and test reactors.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC Home Page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–3367 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–71 and DPR–62, issued to Carolina Power and Light Company (CP&L, the licensee), for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendments would allow an increase in the licensed power from 2558 megawatts thermal (MWt) to 2923 MWt. This change represents an increase of approximately 15 percent above the current licensed power. The proposed amendment would also change the operating licenses and the technical specifications appended to the operating licenses to provide for implementing uprated power operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By March 14, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that 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 petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated August 9, 2001, as supplemented by letters dated October 17, November 7, November 12, November 28, November 30, December 10, and December 20, 2001, which are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 6th day of February 2002.

For the Nuclear Regulatory Commission.

John M. Goshen,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3365 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District (OPPD) Fort Calhoun Station, Unit 1 Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–40 for an Additional 20-Year Period

On January 11, 2002, the U.S. Nuclear Regulatory Commission received, by letter dated January 9, 2002, an application from the Omaha Public Power District (OPPD), filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which authorizes the applicant to operate the Fort Calhoun Station, Unit 1 (FCS), for an additional 20-year period. The current operating license for FCS expires on August 9, 2013. FCS is a pressurized water reactor designed by Combustion Engineering and is located in Washington County, Nebraska. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The license renewal application for the Fort Calhoun Station is also available to local residents at the Blair Public Library in Blair, NE, and the W. Dale Clark Library in Omaha, NE.

Dated at Rockville, Maryland, the 6th of February, 2002.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Program Director, License Renewal and Environmental Impact Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3368 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Reactor Fuels; Postponed

The meeting of the ACRS Subcommittee on Reactor Fuels scheduled to be held on February 12, 2002, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been postponed at the request of the NRC staff. Notice of this meeting was published in the **Federal Register** on Tuesday, January 29, 2002 (67 FR 4290). Rescheduling of this meeting will be announced in a future **Federal Register** Notice.

For further information contact: Ms. Maggalean W. Weston, cognizant ACRS staff engineer (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST) or by e-mail *MWW@NRC.gov.*

Dated: February 6, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–3369 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 11, 18, 25, March 4, 11, 18, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 11, 2002

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

1:55 p.m.—Affirmation Session (Public Meeting)

2:00 p.m.—Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.—Briefing Status of Office of the Chief Financial Officer (OCFO) Programs, Performance and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday March 4, 2002

2:00 p.m.—Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.—Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.—Affirmation session (Public Meeting) (If needed)

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on February 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on February 5, and on less than one week's notice to the public.

By a vote of 5–0 on February 5 and 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (1) private Fuel Storage (Independent Spent Fuel Storage installation) Docket No. 72–22; Review of LBP–01–37, (2) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Applicant's Petition for Interlocutory Review, (3) Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49), and (4) Duke Energy Corp. (McGuire Nuclear Station, Units 1&2; Catawba Nuclear Station, Units 1 & (2), LBP–02–04—Memorandum and Order Ruling on Standing and Contentions (Jan. 24, 2002)'' be held on February 6, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: February 7, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–3502 Filed 2–8–02; 12:17 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: February 4, 2002.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 67 FR 3743, January 25, 2002.

ADDITION: Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2001–3, Periodicals Ride-Along Experiment Extension.

At its meeting on February 4, 2002, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C.

William T. Johnstone,

Secretary.

[FR Doc. 02–3519 Filed 2–8–02; 2:02 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension ''Tell Us How We're Doing!'' SEC File No. 270–406; OMB Control No. 3235–0463.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title of the questionnaire is ''Tell Us How We're Doing!''

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Assistance (OIEA). The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are some of those investors who request assistance or information from OIEA. In 2001, for example, the number of investors who responded was 20, or about 5 percent.

The total reporting burden of the questionnaire in 2001 was approximately 5 hours. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (20 respondents × 15 minutes=5 hours).

Providing the information on the questionnaire is voluntary, and responses are kept confidential.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid Office of Management and Budget control number is displayed.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3345 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–15563]

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration on the American Stock Exchange LLC (IPI, Inc., Common Stock, $.01 Par Value)

February 5, 2002.

IPI, Inc., a Minnesota corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) hereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'')

The Issuer stated in its application that it has met the requirements of

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

Amex Rule l8 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

On January 15, 2002, the Board of Directors of the Issuer (''Board'') approved a resolution to withdraw the Issuer's Security from the Amex. On January 31, 2002, the Issuer held a special meeting of its shareholders to approve and adopt a plan of liquidation and dissolution of the Issuer that will authorize: (i) The sale of the assets of the Issuer and the distribution to shareholders pursuant to the plan; (ii) the deregistration of the Issuer's Security under the Act; and (iii) the dissolution of the Issuer pursuant to the Minnesota Business Corporation Act. The Board believes it advisable and in the best interest of the Issuer to withdraw its Security from listing and registration on the Amex in connection with the plan of liquidation and resolution.

Any interested person may, on or before February 28, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–3306 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 781(b).

[4] 15 U.S.C. 781(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45403; File No. SR–Amex–2001–100]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

February 6, 2002.

I. Introduction

On December 6, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* relating to the Exchange's initial listing fee, annual fee, the fee for listing additional shares and a one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.[3] The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.[4] The Exchange filed Amendment No. 3 to the proposed rule change on January 5, 2002.[5] The proposed rule change, as amended by Amendments Nos. 1 and 2, was published for comment in the **Federal Register** on January 10, 2002.[6] No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to amend sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* to modify initial and annual listing fees, fees for listing additional shares and the one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company.

Specifically, the Exchange proposes to amend section 140 of the *Company Guide* by increasing the original listing fees for stock issues, excluding securities listed under sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the *Company Guide.* The Exchange also proposes that the one time-charge of $5,000 for issuers who do not have a stock or warrant issue listed on the Exchange would now be designated an application processing fee. The original listing fee for Index Fund Shares (*e.g.,* iShares, VIPERs) listed under Rule 1000A and Trust Issued Receipts (*e.g.,* HOLDRs) listed under Rule 1200 is $5000 for each series, with no application processing fee.

The Exchange proposes to amend section 141 of the *Company Guide* by increasing annual fees for stock issues and for issues listed under sections 106 and 107 of the *Company Guide*. In addition, the Exchange proposes to codify an existing procedure in section 141 of the *Company Guide* to provide that the annual fee for Index Fund Shares and Trust Issued Receipts is based on the number of shares of a series outstanding at year-end, with multiple series aggregated for purposes of the fee calculation. Finally, the Exchange proposes that it would no longer reimburse issuers whose securities are removed from Exchange listing for part of any previously paid annual fee applicable to the portion of the year remaining after the date of suspension from dealings.

For issues over 100,000 shares, the Exchange proposes to amend section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

[4] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 (''Amendment No. 2''). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under section 141 as of January 1, 2002 and the revisions to sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under section 144.

[5] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Christopher Solgan, Law Clerk, Division, Commission, dated January 4, 2002 (''Amendment No. 3''). In Amendment No. 3, the Amex made a minor correction to the text of the proposed rule change. This is a technical amendment and is not subject to notice and comment.

[6] *See* Securities Exchange Act Release No. 45235 (January 4, 2002), 67 FR 1373.

142 of the *Company Guide* to increase the maximum fee per company for listing additional shares to $22,500 for issues of 1,125,000 shares or more. In addition, the Exchange proposes a maximum fee per company in any one year for listing additional shares of $45,000. Section 142(a) of the *Company Guide* would also be amended to make clear that section 142 fees apply to Amex securities admitted to unlisted trading privileges (*i.e.*, the relatively few Amex-traded issues grandfathered under section 12 of the Act[7] and not required to execute a listing agreement with the Exchange), comparable to the provision in section 141 of the *Company Guide* for annual fees.

The Exchange proposes to amend section 142(d) of the *Company Guide* (''Substitution Listing'') by raising the fee for listing of new substituted shares from $2,500 to $5,000, and raising the maximum fee for substituted shares and excess shares from $20,000 to $27,500 per quarter, (corresponding to the sum of the proposed $5,000 increase in maximum fees for listing additional shares under section 142(a) of the *Company Guide* and the $2,500 fee increase for listing new substituted shares).

The Exchange proposes to increase the service charge under section 144 of the *Company Guide* to $1,500 for applicants that withdraw their applications or for applications that are not approved. In addition the Exchange proposes to increase the minimum charge if an issuer cancels a listing authorization without issuing such authorized shares from $1,000 to $1,500.

Lastly, the Exchange proposes to amend section 341 of the *Company Guide* to increase the one-time charge imposed in connection with acquisition of a listed company by an unlisted company from $7,500 to $10,000.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that the Exchange has represented it incurs for services provided to issuers. As represented by the Exchange, it has incurred significantly increased regulatory and technology costs over the last several years. In addition, the Exchange stated that the proposed fee increases are necessary to adequately fund the Exchange's listed equities business and development of value-added services for Amex-listed companies and to allow it to relieve pressures on other revenue sources that have traditionally underwritten short falls in regulatory related fees.[11]

The Exchange seeks to implement the proposed annual fees set forth in section 141 of the *Company Guide* as of January 1, 2002. The Commission believes that it is reasonable for the Amex to implement these annual fee increases as of January 1, 2002. As noted above, the Exchange stated that it had incurred increased costs over the last several years and has not increased its annual fees for listing since 1993.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will permit the Exchange to implement the new annual fees as of January 1, 2002, and other fees as of the date of this Order, therefore allowing it to adequately fund its listed equities business and issuer services. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act[12] to approve the proposed rule change, as amended, on an accelerated basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2001–100), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3301 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78*l*.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Amendment No. 1, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45401; File No. SR–Amex–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 393 Relating to Section 31 Transaction Fees

February 6, 2002.

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 February 4, 2002, the American Stock Exchange LLC (''Amex'' 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. The Exchange filed the proposal 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.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 393 relating to transaction fees pursuant to section 31 of the Act.[6] The text of the proposed rule change is below. New text is in italics; deletions are in brackets.

Rule 393. Securities and Exchange Commission Transaction Fee

There shall be paid to the Exchange by each member or member organization in such manner and at such time as the Treasurer of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78ee.

Exchange shall direct, the *fees specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all* [sum of one cent for each $300 or fraction thereof of the dollar volume of the] sales upon the Exchange of securities *specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder* [(other than bonds, debentures, and other evidence of indebtedness or any security which the Commission may, by rule, exempt from the imposition of the fee) (whether or not cleared by a registered clearing agency) cleared by such member or member organization]. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the transaction fee imposed upon the Exchange by the provisions of the Securities Exchange Act of 1934.

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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act[7] has required the remittance of a fee to the Commission of 1/300 of one percent of the aggregate dollar amount of the sale of securities. Excluded from this requirement is the sale of any bonds, debentures, or other evidences of indebtedness and any sale or class of sales of securities that the Commission may, by rule, exempt from the imposition of this fee.

Congress recently passed the ''Investor and Capital Markets Relief Act'' (''ICMRA''), which amends section 31 of the Act. The ICMRA reduced the fee to $15 per $1 million of the aggregate dollar amount of the sale of securities. December 28, 2001 is the effective date for this new rate. The ICMRA provides that the Commission will, twice yearly, determine the amount of any changes in the fee.

Amex Rule 393, which references the previous fee of one cent for each $300 of dollar volume, is therefore being amended to conform it to Congress' recent amendment to section 31 of the Act. Thus, members and member organizations are required to pay to the Exchange whatever fees are specified pursuant to Section 31 of the Act and the rules thereunder.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Amex to immediately conform its rule to reflect the recent amendment to section 31 of the Act. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–07 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3302 Filed 2–11–02; 8:45 am]

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[7] 15 U.S.C. 78ee.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45394; File No. SR–CBOE–2001–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. 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 CBOE proposes to amend CBOE Rule 8.7 regarding AutoQuote parameters. The text of the proposed rule change is set forth below. Additions are in italics.

Chapter VIII: Market-Makers, Trading Crowds and Modified Trading Systems

Section A: Market-Makers

Rule 8.7 Obligations of Market Makers

(a)–(c) No change.

* * * Interpretations and Policies:

.01–.06 No change.

.07 (*a*) Market-Makers are expected to participate in and support Exchange-sponsored automated programs, or approved equivalents, including but not limited to the Retail Automatic Execution System and AutoQuote. *AutoQuote is the Exchange's electronic quotation system that automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. The formula for generating automatically updated market quotations requires the input of certain components including an option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying.*

(b) For those classes in which a DPM, LMM or SMM has been appointed, the responsibility to determine a formula for generating automatically updated market quotations is done by either the DPM pursuant to Rule 8.85(a)(x) or the LMM or SMM pursuant to Rule 8.15. The DPM, LMM or SMM may choose to use either the Exchange's AutoQuote system or a proprietary automated quotation updating systems to monitor and update market quotations. For those option classes in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee may appoint one or more market-makers in good standing with an appointment in the particular option class to determine a formula for generating automatically updated market quotations for a particular period of time using the Exchange's AutoQuote system or a proprietary automated quotation updating system.

(c) For those option classes in which a DPM, LMM, SMM, or appointed market-maker do not have the responsibility set forth in paragraph (b) above, the components in the formula used in each trading crowd to generate automatically updated market quotations shall be as agreed upon by the respective trading crowds. For those classes in which a DPM, LMM, or SMM, or a market-maker in good standing has been appointed the responsibility to determine a formula for generating automatically updated market quotations, the DPM, LMM, SMM or appointed market-maker may, but is not required to, consult with and/or agree with members of the trading crowd in setting the components of the formula, but the members of the trading crowd are not required to provide input in these decisions, and in all instances, the DPM, LMM, SSM, or appointed market-maker has the responsibility to make the final determination as to the components. The provisions of this Interpretation .07 shall also apply to the use of automated quotation updating systems to generate indicative prices that are indications of interest and not firm quotes.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is submitting the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[3] which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. * * *'' The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or Autoquote.[4]

Autoquote is the Exchange's electronic quotation system that automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. The formula for generating automatically updated market quotations requires the selection and input of the following components or variables: An option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying. These Autoquote components may need to be changed during the course of a trading day.

Autoquote is relied upon by all trading crowds to provide automatically updated quotations in options series traded by the crowd. Autoquote provides a means to update the quotes for the tens of thousands of series the Exchange lists.[5] The Commission has recognized ''the importance and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] For purposes of this filing and the proposed interpretation, the term Autoquote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMs, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own Autoquote system.

[5] Although Autoquote is necessary, individual market-makers can and do manually improve the quote themselves in order to gain a larger share of orders than competing market-makers. In these instances, the manual quote overrides the Autoquote for that particular series.

efficiencies of automated systems'' and that ''the Exchange must have the authority to require adequate levels of market maker participation if these systems are going to function efficiently and on a continuous basis.''[6]

The CBOE believes that automatic updating of quotes enabled by Autoquote is the bedrock for many of the Exchange's market maker obligations. For example, pursuant to CBOE Rule 8.51, the Exchange trading crowd as a whole is defined as the ''responsible broker or dealer'' for purposes of the Firm Quote Rule, and thus is obligated to execute a certain number of contracts at the disseminated quote. Accordingly, the CBOE believes that it is very important that the disseminated quote is updated and accurate. Similarly, market makers would not participate in the Exchange's Retail Automatic Execution System (''RAES'') if they did not have confidence in the accuracy of the price of orders executed on RAES.

The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would set forth a more thorough description of Autoquote. The proposed rule change also would identify who has responsibility under Exchange rules to determine a formula for generating automatically updated market quotations. For classes of options in which a DPM is appointed, the DPM would have primary responsibility to determine the formula, which includes determining the components or variables used in the Autoquote formula.[7] For classes of options in which an LMM or SMM is appointed, such as the S&P 100 option class (''OEX''), the LMM or SMM would have primary responsibility to determine the formula for generating automatically updated market quotations.[8] For classes of options in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee would be permitted to appoint one or more market makers in good standing with an appointment in the particular option class (''Appointed Market-Makers'') to determine a formula for generating automatically updated market quotations, using the Exchange's Autoquote system or a proprietary automated quotation updating system.

Although DPMs, LMMs, SMMs, and Appointed Market-Makers would have the responsibility for determining the formula for generating automatically updated market quotations, the proposed amendment to Interpretation and Policy .07 expressly would provide that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in setting the components or variables of the formula. Conversely, the proposal provides that to the extent a DPM, LMM, SMM, or Appointed Market-Maker determines to consult with and/or agree with the market makers in the trading crowd in setting the components of the Autoquote formula, members of the trading crowd would not be required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions.

For classes of options in which a DPM, LMM, SMM or Appointed Market-Maker does not have the responsibility to determine a formula for generating automatically updated market quotations, the market makers would be permitted to coordinate and agree upon the variables for the Autoquote formula. In some trading crowds, one or a few market makers may take responsibility (with the crowd's approval) for updating the Autoquote variables without seeking input on a continual basis. The CBOE believes that such market maker coordination is necessary and appropriate because an Autoquote system is centralized and applicable to all market participants. Thus, the obligations resulting from the quotes generated by Autoquote, such as the firm quote obligation, are imposed on the crowd as a whole.[9] Moreover, although Autoquote is essential to ensure that quotes are updated on the numerous series traded by the Exchange on a timely basis, individual market makers can and do compete among each other to gain a larger share of orders by verbalizing quotes that improve the Autoquote generated quotes. These verbalized quotes by market makers override the Autoquote generated quotes for the particular series that is the subject of the verbalized quote.

Finally, the amendment to Interpretation .07 also would provide that the provisions described above and set forth in the proposed amendment to Interpretation .07 would also apply to the use of automated quotation updating systems that generate indicative prices that are indications of interest and not firm quotes.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 5(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change is procompetitive, because it is necessary to provide for a fair and orderly market in the thousands of option series traded on the Exchange. Accordingly, the Exchange believes the limited joint activity described in this rule proposal is justified by and furthers the objectives of section 11A(a)(1)(C)(ii) of the Act[13] by assuring fair competition among markets. The proposed rule also is consistent with and furthers the objectives of section 6(b)(5) of the Act[14] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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.

[6] *See* Securities Exchange Act Release No. 25787 (June 6, 1988), 53 FR 22083, at 22084 (June 13, 1988).

[7] See CBOE Rule 8.85(a)(x).

[8] On December 17, 2001, the CBOE filed SR–CBOE–2001–63 which amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market Performance Committee (''MPC'') may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day in an options class for which a DPM has not been appointed.

[9] CBOE has always used, and the applicable CBOE rules envision, a centralized autoquote system. Although it may be technologically feasible at some point in the future to have a system that would permit each individual market-maker to have his or her own automatic quote updating capability (and although CBOE may eventually develop such a model), CBOE believes that its centralized autoquote system is essential to preserving CBOE's current model of a floor-based, open-outcry market that includes joint crowd obligations pursuant to rules that have been approved by the Commission.

[10] Interpretation and Policy .10 to CBOE Rule 8.7 provides that ''[m]arket-makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market.''

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[14] 15 U.S.C. 78f(b)(5).

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 CBOE 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–64 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3295 Filed 2–11–02; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45405; File No. SR–CSE–2001–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. Relating to the Creation of the OTC–UTP System on the Cincinnati Stock Exchange, Inc.

February 6, 2002.

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 October 31, 2001, the Cincinnati Stock Exchange, Inc. (''CSE'' 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. The Exchange filed an amendment to its proposal on February 5, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 11.9, National Securities Trading System (''NSTS''), to create a parallel trading system within the Exchange for Nasdaq/National Market securities (''Nasdaq securities''). The Over-the-Counter (''OTC'') Unlisted Trading Privileges (''UTP'') System (''OTC–UTP System''), while operating on CSE's current hardware and communication lines, will subject CSE users to altered Exchange rules that make the CSE's price/time and agency/principal priorities voluntary for Nasdaq securities. The CSE believes that the proposed rule change will enhance the competitive position of the Exchange by promoting increased liquidity and greater opportunities for members and their customers to obtain best execution on the CSE. The text of the proposed rule change is available at the principal offices of the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission (February 5, 2002) (''Amendment No. 1'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its rules to create the OTC–UTP System within the CSE that will provide CSE members with increased flexibility to provide best execution to their customers' orders. In order to more effectively compete for order flow in Nasdaq securities, CSE is proposing to amend its price/time and agency/principal priority rules such that CSE users (''Users'')[4] may voluntarily and on an order-by-order basis determine to interact with other bids, offers, and orders displayed in CSE's OTC–UTP System. CSE believes that the new trading system is consistent with the federal securities laws and similar in nature to that currently employed by the Nasdaq Stock Market, Inc. (''Nasdaq'') and as proposed in the Nasdaq's exchange filing.[5]

Description

The CSE's current trading system, NSTS, is an electronic securities communication and execution facility, that combines the display of bids, offers, and orders of Users as well as orders on the NSTS central limit order book (''CLOB'') with the matching and execution of like-priced orders, bids, and offers according to programmed price/time and agency/principal priorities.[6] The price/time and agency/principal priority rules are set forth in CSE Rules 11.9(i), (l), (m), and (u).

Rule 11.9(i) states that NSTS shall automatically match and execute like-priced orders, bids and offers in accordance with the price/time and agency/principal priorities set forth in

[4] CSE Rule 11.9(a)(7) defines the term ''User'' as a Member of the Exchange or an Approved Dealer.

[5] *See* Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[6] CSE Rule 11.9(a)(1).

Rules 11.9(l) and (m).[7] Rule 11.9(l) provides that public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers on NSTS at the same price. In addition, Rule 11.9(l) imposes price/time priority on all bids and offers, except those executed pursuant to Rule 11.9(u), such that the first in line at the best price shall be executed.[8]

Rule 11.9(m) requires that each Approved Dealer[9] or other Proprietary Member[10] when trading on the exchange for its own account or as agent for professional agency orders[11] yield priority to (1) All public agency orders in the CLOB at prices equal to, or better than, the Dealer's order, bid, or offer; and (2) all orders, bids, and offers of an Approved Dealer or other Proprietary Member for its own accounts or as agent for professional agency orders entered in NSTS (i) at an earlier time than the Dealer's order, bid, or offer, or (ii) in the case of Approved Dealers when trading for their own account against public agency orders they represent as agent pursuant to Rule 11.9(u).

Rule 11.9(u), ''Preferencing Rule,'' permits orders to be preferenced to particular Approved Dealers and executed at the same price as current Approved Dealer bids, offers, and professional agency displayed orders without regard to the time priority of such bids, offers, and displayed orders.[12]

To accommodate the introduction of the OTC–UTP System, CSE is amending the above rules, where necessary, to clarify that the price/time and agency/principal priorities are voluntary with respect to trading in Nasdaq securities. For example, subparagraph (2) will be added to Rule 11.9(i) to provide that ''the OTC–UTP System will match and execute like-priced orders, bids, and offers when specifically instructed by the CSE Users. Subject to the obligations of Rule 12.10, Best Execution, Users may choose to execute like-priced orders without regard to the price/time and agency/principal priorities set forth in Rules 11.9(l) and (m).''[13] Similarly, Rule 11.9(l) will be amended to state that ''Public Agency orders, except in Nasdaq/NM securities traded through the OTC–UTP System, * * * shall have priority. * * *''[14]

In addition, the CSE system algorithms that enforce the price/time and agency/principal priority rules will be modified to comply with the voluntary order interaction of the OTC–UTP System. However, Rule 12.6, Customer Priority, which is CSE's ''Manning'' rule will not be amended and will continue to be enforced as written on CSE Designated Dealers.

Discussion

CSE's Preferencing Rule (Rule 11.9(u)) was a step towards creating a more competitive environment for exchange-listed securities traded on a UTP basis on the CSE. By adopting a rule that permits CSE dealers to execute customer orders without regard to the time priority of other CSE dealer orders, bids, and offers, the CSE introduced elements of a dealer market, such as Nasdaq, into its exchange structure. In approving preferencing on CSE, the Commission recognized that, ''the CSE combines the features of both exchange and over-the-counter markets.''[15] Further, the Commission stated that:

> [t]hus, the NSTS system provides a central location for CSE dealers to interact in a manner similar to a traditional exchange trading floor. Preferencing, however, suspends time priority between professional trading interest so that the multiple CSE dealers can execute their own customer orders without interruption by other dealers and is more akin to trading in the over-the-counter markets.[16]

While the Commission was cautious in supporting preferencing at its inception, CSE has proven that the quality of executions pursuant to the Preferencing Rule are equal to, and often exceed, the quality of executions on the primary markets for exchange-listed securities. As the data published pursuant to Rule 11Ac1–5 demonstrates, CSE execution quality consistently exceeds that of the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC, the two primary listed markets. Indeed, CSE numbers are better than those of the NYSE in such categories as effective spread, execution speed, and percent of executions outside the quoted market. Clearly, eliminating time priority among CSE dealers has benefited CSE customers through better prices and faster service.

CSE now seeks to expand on these benefits by introducing the OTC-UTP System, which makes price/time and agency/principal priorities for bids, offers, and orders in Nasdaq securities voluntary among CSE market participants. The CSE believes that such an open architecture is necessary to attract liquidity from various market participants, including dealers, order-entry firms, ECNs, ATSs, and public customers. As greater liquidity is introduced into CSE, the competitive efficiencies of this open structure will generate greater opportunities for order interaction as well as faster and cheaper executions for public customers. In summarizing the congressional intent of section 11A of the Act, the Commission stated in its Concept Release on Issues Relating to Market Fragmentation that

> Investor interests are best served by a market structure that, to the greatest extent possible, maintains the benefits of both an opportunity for interaction of all buying and selling interest in individual securities and fair competition among all types of market centers seeking to provide a forum for the execution of securities transactions.[17]

The CSE believes that the freely competitive nature of the OTC-UTP System will attract new CSE Users and greater liquidity to the Exchange. As liquidity begets liquidity, order interaction increases and investors are better served. Once the algorithmic controls are removed and replaced by the voluntary—to the extent that volition is constrained by the duty of best execution—interaction of bids, offers, and orders, the CSE believes that its quote driven market will be on a level playing field with Nasdaq and an era of true price competition in Nasdaq securities may begin. By combining fair competition with opportunities for increased order interaction, the CSE believes it has proposed a mechanism to achieve the goals of section 11A of the Act.

As the Commission is aware, Nasdaq members trade without regard to price and time priority and intend to do so

[7] *See* CSE Rule 11.9(i).

[8] *See* CSE Rule 11.9(l).

[9] CSE Rule 11.9(a)(4) defines ''Approved Dealer'' as a Designated Dealer, a Contributing Dealer, or a specialist or market maker registered as such with another exchange or national securities association with respect to any Designated Issue.

[10] Article I, Section 1(k) of CSE By-Laws defines ''Proprietary Member'' as a person who was a ''regular member'' prior to the effective date of these By-Laws or a person who, pursuant to the provisions of Article II of these By-Laws, has applied for, and been admitted to, membership as a proprietary member subsequent to the effective date of these By-Laws.

[11] CSE Rule 11.9(a)(10) defines ''professional agency order'' as an order entered by a User as agent for the account of a broker-dealer, a futures commission merchant, or a member of a contract market.

[12] *See* CSE Rule 11.9(u).

[13] *See* Proposed Rule 11.9(i)(2). The CSE notes that with regard to matched like-priced orders delivered to CSE by Users, such like-priced orders are executed on CSE's OTC–UTP System at the moment in time (as captured by the User's system time stamp) that the matched like-priced orders are sent to CSE.

[14] *See* Proposed Rule 11.9(l).

[15] *See* Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996).

[16] *Id.*

[17] *See* Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2001) (emphasis added).

when Nasdaq becomes an exchange. Nasdaq market makers may execute customer orders without regard to other Nasdaq bids, offers, displayed customer orders, and without being executed through a Nasdaq system. Nasdaq believes that its model promotes competition among various market participants while balancing the fundamental values necessary for the protection of investors. As stated by Nasdaq, ''[i]n the real world of investor needs, price is not a simple issue. In most cases, size and immediacy are also a consideration, and the most efficient execution may not take place at the inside.''[18]

The Commission affirmed this model in its recent approval of Nasdaq's SuperMontage system.[19] SuperMontage is a Nasdaq system that provides for the enhanced display of quotes and orders combined with certain execution functionalities based upon multiple priority algorithms. Nasdaq believes that SuperMontage, ''advances the fairness and efficiency of the handling of individual limit orders—without inhibiting the creativity of the competitive marketplace which serves the interests of all investors.''[20] Nasdaq preserves its creativity by making SuperMontage voluntary. Nasdaq market makers holding customer orders do not have to place them into the SuperMontage order facility and may execute such orders at any price and at any time without regard to the time and price algorithms of SuperMontage (subject, of course, to the obligations of providing best execution).

In approving SuperMontage, the Commission noted that

> Today most orders in Nasdaq securities are executed directly between Nasdaq participants, not using Nasdaq systems. No price/time priority rules apply to this trading, other than a market maker's duty to protect its customer limit orders before trading as principal. While price priority is generally honored as a market principle in executing orders outside of Nasdaq's systems, time priority is not accorded to quotes in this trading. Even after SuperMontage is implemented, many orders probably will be executed outside of SuperMontage free from time priorities.[21]

According to the NASD, only 26 percent of share volume and 36 percent of trades in Nasdaq are executed using SOES and SelectNet.[22] This leaves approximately 70 percent of Nasdaq volume to be executed outside any price and time priority rules. The Commission has stated that, ''[i]t is unlikely that market makers will enter customer market orders into SuperMontage rather than simply internalizing them directly.''[23]

The question then is whether Nasdaq's exchange status, if approved, should require Nasdaq to change its general lack of price and time priority. Nasdaq certainly believes that no change is necessary. Nasdaq's proposed exchange rules do not create any price or time priorities separate and apart from the voluntary provisions of SuperMontage. The Commission, in publishing notice of Nasdaq's application for registration as an exchange, raised certain implications related to Nasdaq's separation from the NASD and its application to be an exchange.[24] While this list of implications likely was not intended to be exhaustive, the Commission did not raise whether Nasdaq should be required to impose price and time priority in order to become an exchange.

The CSE, however, brought this matter before the Commission in its comment letter on Nasdaq's exchange application.[25] The CSE emphasized that a competitive response to Nasdaq would be necessary. In filing its exchange rules without providing for general price/time priority and mandatory centralization of order interaction, Nasdaq apparently believes that the Commission will approve Nasdaq's decentralized market model. Similarly, the CSE is proposing its OTC–UTP System because CSE believes that its proposed market structure is both consistent with the federal securities laws and promotes competition and efficient execution practices for the ultimate benefit of public investors.

Regulatory Oversight

The Exchange will oversee the OTC–UTP System in the same manner and using the same techniques as used for trading through NSTS. Given the significance of Rule 12.10, Best Execution, in the operation of the OTC–UTP System, however, the Exchange is designing new automated exception reports to track unusual trading activity that may indicate a failure to provide best execution. The unusual trading activity review will include, but not be limited to, a review of trades at prices inferior to preexisting bids, offers, and orders, particularly, trades inferior to public agency orders on the CLOB. The surveillance procedures should reduce the possibility of inadvertent mishandling of orders and should detect trading abuses that may be related to a denial of best execution. In addition, these regulatory measures should induce Users to generally honor price priority across all bids, offers, and orders, on the CSE, and thereby increase the likelihood of order interaction on the CSE.

The Regulatory Staff also will include in its annual examination of members a review of order handling and execution practices in light of the daily exception reports generated by the Exchange. The Exchange believes that its proposed regulatory measures exceed those applied by NASD Regulation to trading on Nasdaq and should assure the Commission that trading activity related to the OTC–UTP System will be performed in accordance with the just and equitable principles of trade as required by the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[26] in general, and section 6(b)(5) of the Act,[27] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.[28]

[18] *See* letter from Richard Ketchum, President, NASD to Jonathan G. Katz, Secretary, Commission (May 22, 2000) (''Market Fragmentation Letter'').

[19] *See* Exchange Act Release No. 43514 (November 3, 2000), 65 FR 69084 (November 15, 2000) (''SuperMontage Order'').

[20] *See* Market Fragmentation Letter, *supra* note 18.

[21] *See* SuperMontage Order, *supra* note 19.

[22] *Id.*, at Note 222.

[23] *Id.*, at 26.

[24] *Supra* note 5 at 31953.

[25] *See* letter from Jeffrey T. Brown, General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (August 28, 2001).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The Commission received a comment letter from the Nasdaq and a response to the letter from the CSE. Both letters are available in the Commission's Public Reference Room. *See* letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, Commission (January 9, 2002) and letter from Jeffrey T. Brown, Senior Vice

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2001–04 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3297 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45406; File No. SR–CSE–2002–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Establishing a Fee Schedule for Nasdaq National Market Securities Transactions and Establishing a Revenue Sharing Program for Trading in Nasdaq National Market Securities

February 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 25, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' 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 CSE.[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

The Exchange proposes to amend the Exchange's rules to establish a fee schedule for transactions in Nasdaq National Market securities (''Nasdaq NM Securities'') and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is available at the principal offices of the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and the 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. CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The CSE withdrew SR-CSE–2001–05 and replaced it with SR–CSE–2002–01 by letter. *See* letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 25, 2002).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two amendments to the Exchange rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry.

The first amendment adds subsection (2) to CSE Rule 11.10(A)(e), (''Crosses and Meets''). Proposed subsection (2) establishes a fee schedule for transactions in Nasdaq NM Securities.

The second amendment creates an incentive for CSE members to trade Nasdaq NM Securities on the Exchange and will be codified as CSE Rule 11.10(A)(l) (''Tape 'C' Transaction Credit''). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to CSE members trading Nasdaq NM Securities. Under the Nasdaq program,[4] CSE member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by CSE member trading of Nasdaq NM Securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[5] generally, and section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act[7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] Nasdaq NM Securities will be traded on CSE pursuant to section 12(f) of the Act as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq-UTP Plan'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.[8]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(2) thereunder,[10] as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE–2002–01 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3299 Filed 2–11–02; 8:45 am]

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[8] The Commission received a comment letter from the Nasdaq and a response to the letter from the CSE. Both letters are available in the Commission's Public Reference Room. *See* letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, Commission (January 9, 2002) and letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(2).

[11] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45361; File No. SR–MSRB–2002–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–17, on Disclosure of Material Facts

January 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2002 the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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

Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts

Rule G–17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers[3] not to engage in deceptive, dishonest, or unfair practices. This first prong of rule G–17 is essentially an antifraud prohibition.

Second, the rule imposes a duty to deal fairly. Statements in the MSRB's filing for approval of rule G–17 and the Commission's order approving the rule note that rule G–17 was implemented to establish a minimum standard of fair conduct by dealers in municipal securities. In addition to the basic antifraud prohibitions in the rule, the duty to ''deal fairly'' is intended to ''refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets.''[4] As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[5] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G–17 was adopted many years prior to the adoption of the Exchange Act's Rule 15c2–12. The development of the NRMSIR system,[6] the MSRB's Municipal Securities Information Library® (MSIL®) system[7] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''dealer'' is used in this interpretive notice as shorthand for ''broker,'' ''dealer'' or ''municipal securities dealer,'' as those terms are defined in the Exchange Act. The use of the term in this interpretive notice does not imply that the entity is necessarily taking a principal position in a municipal security.

[4] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).

[5] *See e.g.,* Rule G–17 Interpretation—Educational Notice on Bonds Subject to ''Detachable'' Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129–130. The Commission described material facts as those ''facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision.'' *Municipal Securities Disclosure,* Exchange Act Release No. 26100 (Sept. 22, 1988) (the ''1988 SEC Release'') 53 FR 37778 at note 76, quoting *In re Walston & Co. Inc., and Harrington,* Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc. v. Northway, Inc.,* 426 U.S. 438 (1976).

[6] For purposes of this notice, the ''NRMSIR system'' refers to the disclosure dissemination system adopted by the Commission in Rule 15c2–12. Under Rule 15c2–12, as adopted in 1989, participating underwriters provide a copy of the final official statement to a NRMSIR to reduce their obligation to provide a final official statement to customers. In the 1994 amendments to Rule 15c2–12, the Commission determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings must be delivered to each NRMSIR and to the State Information Depository (''SID'') in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2–12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.

[7] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB rule G–36, as well as certain secondary market material event disclosures provided by issuers under Rule 15c2–12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.

Transaction Reporting System (''TRS''),[8] rating agencies and indicative data sources in the post-Rule 15c2–12 era have created much more readily available information sources. Recently, the market has made progress and market professionals (including institutional investors) can, and do, go to these industry sources to find securities descriptive information, official statements, rating agency ratings and reports, and ongoing disclosure information. These developments suggest a need for further explanation of what ''disclosure of all material facts'' means in today's market.

Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal securities transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources'').[9]

The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured ''triple-A'' rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example, because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.

With respect to primary offerings of municipal securities, the Commission has noted, ''By participating in an offering, an underwriter makes an implied recommendation about the securities.'' The Commission stated, ''This recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.''[10] Similarly, if a dealer recommends a secondary market municipal securities transaction, rule G–19 requires a dealer to ''have reasonable grounds for the recommendation in light of information available from the issuer or otherwise.''[11] If this ''reasonable basis'' suitability cannot be obtained from the established industry sources, then further review may be necessary before making a recommendation. To the extent that such review elicits material information that would not have become known through a review of established industry sources, dealers recommending transactions would be obligated to disclose such information in addition to information available from established industry sources.

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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

In May 2000, the MSRB-hosted a roundtable discussion about the use of electronic trading systems in the municipal securities market. Industry discussion at the roundtable, as well as subsequent comments, made it apparent that the municipal securities market, like the equity market, is in the process of developing alternative models of trading relationships between dealers and customers.

Based on the comments from the industry as well as the MSRB's review of market developments, the MSRB concluded that in order for innovation to occur, the industry needed interpretive guidance on the application of certain rules to these new trading methodologies. Alternative trading systems present the most graphic example of changing dealer/customer relationships and consequent need for regulatory change, but the changing relationships are not necessarily limited to electronic trading venues.

The MSRB proposed the original sophisticated market professional (''SMP'') concept in guidance that was published for comment in September 2000 (''2000 Notice'') to illustrate how different fair practice rules would operate when dealers were transacting with sufficiently sophisticated market professionals. When the 2000 Notice was released for comment, several institutional investors raised concerns about the appropriateness of the guidance in light of the municipal securities disclosure regime. For example, investors asserted that the duty of a dealer to disclose all material information under rule G–17 is necessary because it cannot be presumed that an investor, however sophisticated, has access to all information that has been gathered by or is available to a dealer. Investors also noted that, like retail investors, institutional investors struggle to get the necessary disclosures in the municipal securities market and that a dealer, by virtue of its relationship with the issuer, may possess information that is material but unavailable to the investor on a timely basis.

The MSRB believes that these concerns are valid, but that they overstate the scope of a dealer's rule G–17 obligations. In order to attempt to alleviate investors' concerns about the SMMP concept's application to rule G–17, the new rule G–17 interpretive notice includes an expanded explanation of what rule G–17's

[8] The MSRB's TRS collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.

[9] Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under Rule G–17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

[10] 1988 SEC Release at text following note 70. The Commission also stated that an underwriter must review the issuer's disclosure documents for possible inaccuracies and omissions. In the case of a negotiated offering, the Commission expects the underwriter to make an inquiry into the key representations included in the disclosure materials. In the case of a competitive offering, the Commission acknowledges that the underwriter may have more limited opportunities to undertake such a review and investigation but nonetheless is obligated to take appropriate actions under the particular facts and circumstances of such offering.

[11] *See e.g.,* Rule G–19 Interpretation'Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985 *MSRB Rule Book* (July 2001) at 134; *In re F.J. Kaufman and Company of Virginia,* 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (discussing ''reasonable basis'' suitability).

obligation to ''disclose all material facts'' means in today's market.

Investors' comment letters suggest that they have interpreted rule G–17's affirmative disclosure obligations too broadly by implying that a dealer always has an obligation to ''acquire'' all material information about a municipal security before effecting a customer transaction. Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources''). In other words, if a material fact is known by the dealer or available from an established industry source and the dealer did not disclose such fact to its customer, then the dealer could be found to have violated rule G–17.[12]

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with this standard in that it will clarify that a dealer's general obligations to provide disclosure about a municipal security is viewed within the context of reasonably available information about the municipal security and the dealer's actual knowledge of the municipal security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On July 6, 2001, the MSRB published a Notice and Draft Interpretive Guidance concerning two related topics (''2001 Notice'').[13] The first notice concerns rule G–17 and the disclosure of material facts. The second concerns sophisticated municipal market professionals. The MSRB invited public comments on all aspects of the 2001 Notice.[14] In response to the 2001 Notice, the MSRB received eight comment letters.[15] Four of those comment letters addressed the Rule G–17 Notice.[16] The comment letters ask for some modification to the rule G–17 interpretation, but in general seemed to ''welcome and concur with the MSRB's statements regarding a dealer's obligations to ''disclose all material facts'' in the context of today's evolving trading environment.''[17] After reviewing the comment letters, the MSRB approved the revised rule G–17 interpretive notice, with certain modifications and additions, for filing with the Commission.

Established Industry Sources

Comments Received. All four of the comment letters received suggest that the MSRB should not identify specific repositories of information as ''established industry sources.''[18] TBMA states that '' 'established industry sources' change frequently—especially now, as issuer websites and other technological advances are making new information sources available to our industry on a daily basis.''

MSRB Response. By using the term ''established industry sources,'' the MSRB intended to alert dealers to the sources of material information that are considered reasonably accessible to dealers engaging in municipal securities transactions. The definition identifies the basic sources for material information concerning municipal securities and recognizes that for some securities there may be other sources of information relating to the municipal securities transaction that are generally used by dealers that effect transactions in the type of security at issue.

While the MSRB is hopeful that technological advances will develop new sources of municipal securities information, the MSRB believes that the sources listed as established industry sources remain the predominant public sources of municipal securities information. Moreover, the definition of ''established industry sources'' was deliberately drafted to include additional sources that may be developed for certain securities. Likewise, if any of the listed sources of information become less relevant to the market in the future, the MSRB can make specific note of it at that time.

Raising the Standard of Care

Comments Received. MuniCenter's letter suggests that the MSRB is ''raising the standard of care'' for dealers and states that they doubt ''that broker-

[12] Concurrently with this filing, the MSRB is filing with the Commission an interpretive notice regarding dealers' obligations when effecting transactions for sophisticated municipal market professionals (''SMMPs''). *See infra* note 13 and Filing No. SR–MSRB–2002–02. Once the SMMP notice is approved, dealers who effect non-recommended secondary market transactions for SMMP customers will not be obligated to affirmatively disclose the information available from established industry sources to their SMMP customers. However, as in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

[13] ''Notice and Draft Interpretive Guidance on Rule G–17—Disclosure of Material Facts and Interpretive Guidance Concerning Sophisticated Municipal Market Professionals,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 3, attached to the filing application as Exhibit 2.

[14] The 2001 Notice was a revision to guidance that was published in September 2000 (''the 2000 Notice''). The 2000 Notice, which related only to the SMP guidance, received 17 comment letters that were considered prior to publishing the 2001 Notice. Concurrently with this rule G–17 filing the MSRB is filing its SMMP guidance with the Commission for approval. A discussion of the 2000 Notice and the comment letters received in response thereto is included in the MSRB's SMMP filing, which has been filed as File No. SR–MSRB–2002–02.

[15] Letter from Linda L. Rittenhouse, Staff, Association for Investment Management and Research Advocacy, to Carolyn Walsh, dated October 19, 2001 (''AIMR''); letter from David C. Witcomb, Jr., Vice President, Compliance Department, Charles Schwab & Co., Inc., to Carolyn Walsh, dated October 11, 2001 (''Schwab''); letter from Michael J. Marx, Vice Chairman, First Southwest Company, to Carolyn Walsh, dated October 12, 2001 (''First Southwest''); letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Carolyn Walsh, dated October 19, 2001 (''ICI''); letter from Alan Polsky, Chairman, National Federation of Municipal Analysts, to Carolyn Walsh, dated November 13, 2001 (''NFMA''); letter from Roger G. Hayes, Chair, The Bond Market Association Municipal Securities Division E—Commerce Task Force, to Carolyn Walsh, dated October 10, 20001 (''TBMA''); letter from Thomas S. Vales, Chief Executive Officer, TheMuniCenter, to Carolyn Walsh, dated October 1, 2001 (''MuniCenter''); and letter from David Levy, Sr. Associate General Counsel, First Vice President, UBS Paine Webber Inc., to Carolyn Walsh, dated October 19, 2001 (''UBSPW'').

[16] *See* First Southwest, MuniCenter, TBMA, and UBSPW, *supra* note 15.

[17] UBSPW, *supra* note 15.

[18] First Southwest, MuniCenter, TBMA, and UBSPW, *supra* note 15.

dealers operating in the traditional marketplace, effecting a municipal transaction that does not involve making a recommendation, have interpreted fair dealing rules to require that they discover and disclose information from specified sources.'' [19]

MSRB Response. The rule G–17 interpretive notice does not raise the standard of care required by dealers in non-recommended transactions with customers. The existing interpretive statement on rule G–17 can be construed, on its face, to obligate dealers to disclose all material information about a municipal security transaction, without regard to how accessible the information is to the dealer. The proposed rule change makes clear that the obligation of the dealer to disclose all material information is limited to such information that is reasonably accessible.

The MSRB recognizes that at times dealers may have difficulty ensuring that they have taken into account all material information available from established industry sources when disclosing material information to customers. The MSRB has been working with the industry to improve dealers' ability to access all material information concerning municipal securities transactions so that dealers can better meet their regulatory responsibilities. However, given that the disclosure system is currently not as accessible to most customers as it is to dealers, the MSRB continues to believe that dealers must be responsible for disclosing information available from established industry sources to customers.[20]

Providing Electronic Access

Comments Received. MuniCenter is concerned that an obligation to disclose is ''susceptible to an interpretation that the broker-dealer must actually deliver or otherwise communicate all material facts derived from established industry sources.'' [21] MuniCenter states that it believes that providing electronic access to information is consistent with the obligation to disclose information and would like confirmation of that view by the MSRB.

MSRB Response. The MSRB does not believe it would be appropriate for it to issue a blanket statement to the effect that providing electronic access to information always fulfills a dealer's obligation to disclose this information to a customer. Nevertheless, the MSRB believes that under appropriate facts and circumstances (*e.g.,* the dealer is not shifting the cost of acquiring the information to the customer, the link is prominent and functioning and the link provides information that is comprehensible to the customer) providing electronic access to information is consistent with the dealer's disclosure obligation. Therefore, the MSRB has added a statement to the rule G–17 interpretive notice to the effect that the MSRB believes that the provision of electronic information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose information, but whether such access constitutes effective disclosure ultimately depends upon the particular facts and circumstances present.

[19] MuniCenter, *supra* note 15.

[20] The MSRB's proposed SMMP interpretive notice acknowledges that certain customers (*i.e.,* SMMPs) have access to established industry sources and would allow dealers to effect non-recommended secondary market transactions with SMMPs without making the affirmative disclosures required under rule G–17. *See* File No. S–MSRB–2002–02.

[21] MuniCenter, *supra* note 15.

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 self-regulatory organization 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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–01 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3298 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45404; File No. SR–NYSE–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 351 Concerning the Reporting of Criminal Offenses by Members and Member Organizations to the Exchange

February 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 9, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 351 that would narrow the scope of reportable criminal offenses reported by members and member organizations to incidents, which are more germane to the conduct of a securities-related business and would, therefore, minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. Moreover, the proposed amendment would capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

disqualification under section 3(a)(39) of the Act.[3]

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Reporting Requirements

Rule 351

(a) (1)—(4) no change.

(a) (5) is arrested, arraigned, indicted or convicted of, or pleads guilty to, pleads no contest to, [any criminal offense (other than minor traffic violations)] *any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity in a domestic or foreign court.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend NYSE Rule 351(a)(5) with respect to the reporting of criminal offenses by members and member organizations to the Exchange. According to the Exchange, one of its objectives, as provided by the Exchange's Constitution, is to ''maintain high standards of commercial honor and integrity among its members, allied members, member firms and member corporations.* * *'' To this end, NYSE Rule 351(a)(5) requires that members and member organizations promptly report to the Exchange whenever a member, member organization, or any member, allied member or registered or non-registered employee associated with such member or member organization is arrested, arraigned, indicted, convicted of, pleads guilty to or pleads no contest to, any criminal offense (other than a minor traffic violation).

According to the Exchange, the reporting requirement under NYSE Rule 351(a)(5) is intended to assist it ensure that its members, allied members and member organizations possess commercial integrity and can function in a fiduciary capacity. However, the Exchange believes that the definition of a reportable offense under NYSE Rule 351(a)(5) is too broad in its current form and departs from the prevailing industry disclosure requirements.[4] The Exchange states that it has required member organizations to report a wide range of criminal offenses to the Exchange. In fact, the Exchange believes that the majority of offenses currently reported to the Exchange do not relate to the commercial integrity of the industry. The Exchange states that such reported offences are not business-related, such as fraud, embezzlement, theft or forgery. More often, the Exchange states, the reported offences relate to violations of the motor vehicle code, such as drunk driving offenses.

As a result, the Exchange believes the overly broad reference to ''criminal offense'' under NYSE Rule 351(a)(5) currently requires applicants to report information that is of no regulatory interest to the Exchange, is not in keeping with other industry regulatory requirements and places unnecessary demands on Exchange staff since they have been required to review these unnecessary filings. For example, the Exchange asserts that 95% of the 154 reported arrests in the first quarter of 2001 were not felonies or business-related offenses. In fact, 50% of the reported arrests involved drunk driving offenses. Under the proposed amendment, the Exchange states that these types of arrests would not need to be reported to the Exchange.

According to the Exchange, the proposed rule change would narrow the scope of reportable criminal offenses required by members and member organizations to incidents, which are more germane to the conduct of a securities-related business and would, therefore, minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. However, the Exchange notes that the proposed rule change would still require that every felony be reported to the Exchange, while only the proposed enumerated misdemeanors need be reported.[5] Moreover, the Exchange believes that the proposed rule change would capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39)[6] of the Act.

(2) Statutory Basis

The Exchange believes the basis for the proposed rule change, as amended, is the requirement under sections 6(b)(5)[7] and 6(c)(2) of the Act.[8] Section 6(b)(5)[9] requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. Section 6(c)(2)[10] permits an exchange to deny membership to a registered broker-dealer or bar association of a natural person with a registered broker-dealer who is subject to a statutory disqualification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition 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

Comments were neither solicited nor received by the Exchange.

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)

[3] 15 U.S.C. 78c(a)(39).

[4] Under the current version of the Form U–4, Question 22A(1) reads as follows: ''Have you ever (a) been convicted of or pled guilty or nolo contendere (''no contest'') in a domestic, foreign, or military court to any felony? (b) been charged with any felony?' Question 22B(1) reads as follows: Have you ever (a) been convicted of or pled guilty or nolo contendere (''no contest'') in a domestic or foreign court to a misdemeanor involving: investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion, or a conspiracy to commit any of these offenses? (b) been charged with a misdemeanor specified in 23B(1)(a)?

[5] Telephone conversation between Susan Light, Vice President, NYSE, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2002.

[6] 15 U.S.C. 78c(a)(39).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(2).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c)(2).

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–06 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3300 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45392; File No. SR–PCX–2001–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 PCX is proposing to adopt rules pertaining to collective actions of options market makers that may be made in determining spreads or prices in particular option series. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

¶4935 Obligations of Market Makers

Rule 6.37(a)–(c)—No change.

(d)—[Reserved][3]

(e) Prohibited Practices and Procedures.

(1) Any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.

(2) [Reserved]

(f) Notwithstanding the prohibitions set forth in Subsection (e), the LMM and members of the trading crowd are permitted to act collectively as set forth below:

(1) The LMM may receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd are not required to provide input to the LMM on any of these variables. Notwithstanding any input that the members of the trading crowd may have provided with regard to these variables, it is within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems; provided, however, that LMMs may disclose the variables themselves pursuant to Rule 6.82(c)(8).

(2) The obligation of Market Makers to make competitive markets does not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. For purposes of this rule, a large order is an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to Rule 6.87.

(3) In conjunction with their obligations as a responsible broker or dealer pursuant to Rule 6.86 and SEC Rule 11Ac1–1, the LMM and Market Makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to Rule 6.86(c).

Lead Market Makers

Rule 6.82(a)–(b)—No change.

(c) Obligations of Lead Market Makers:

Each LMM must meet the following obligations:

(1)–(7)—No change

(8) LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. The LMM may disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).

[(8)–(13)]– *(9)–(14)*—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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed Rule 6.37(d) is pending SEC approval. *See* File No. SR–PCX–99–13.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 (''Obligation of Market Makers'') by adding a new subsection (e) to be entitled, ''Prohibited Practices and Procedures.'' Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.

The Exchange is also proposing to adopt new PCX Rule 6.37(f), which would provide that notwithstanding the prohibitions set forth in Subsection (e), the Lead Market Maker (''LMM'') and members of the trading crowd are permitted to act collectively as set forth in subsection (1) through (3) of proposed PCX Rule 6.37(f).

Subsection (1) to proposed PCX Rule 6.37(f) would permit the LMM to receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd would not be required to provide input to the LMM on any of these variables. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would further state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems; provided, however, that LMMs would be permitted to disclose the variables themselves pursuant to proposed PCX Rule 6.82(c)(8). The Exchange believes such input into autoquote variables helps to assure the quality of the Exchange's markets. An LMM may have a variable set erroneously or may have failed to update a variable in response to new information. The Exchange believes that the proposed rule change would allow such errors to be rectified promptly.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1,[5] the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 (''Obligations of Lead Market Makers'') by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).

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 Section 6(b)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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 PCX 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–50 and should be submitted by March 5, 2002.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] 17 CFR 240.11Ac1–1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3296 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45395; File No. SR–PCX–2001–33]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1, To Adopt Procedures for the Transfer of Options Positions

February 5, 2002.

On August 10, 2001, the Pacific Exchange, Inc. (''PCX'') 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 adopt procedures for the transfer of options positions. On December 11, 2001, the Exchange amended the proposal to: (1) Clarify the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revise Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) make technical changes to the rule text.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it establishes which position transfers may occur off the floor and which position transfers must be offered to the floor, and the procedures for effecting such transfers. The Commission believes differentiating between on floor and off floor position transfers and clearly delineating the procedures for effecting such transfers, will aid in the orderly transfer of option positions which should help to perfect the mechanism of a free and open market and a national market system, and further the public interest.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–33), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3304 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission and attachments (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45188 (December 21, 2001), 66 FR 67606.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission also notes that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A, which the Commission approved on December 28, 1995. *See* Securities Exchange Act Release No. 36647, 61 FR 566 (January 8, 1996).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45396; File No. SR–PCX–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation'') 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 PCXE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCXE, proposes to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of $2,500 in connection with their appeal of the Corporation's decision to delist a security. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCXE Rule 5.5(m) provides the procedures with which the Corporation complies in determining to delist a security for other than routine reasons (such as redemptions, maturities, etc.). In order to determine whether the security meets the maintenance criteria, the Corporation relies upon the objective data furnished by the issuer.[3] If it appears that the security no longer meets the maintenance requirements, the Corporation notifies the issuer in writing describing the basis on which the Corporation is considering delisting the security and proposes to meet with the issuer to hear reasons why the issuer believes the security should not be delisted.[4] If the issuer does not provide a sufficient basis demonstrating that it meets the current listing criteria, the Corporation will notify the issuer that it proposes to delist the security and that the issuer has the right to appeal the decision.[5] An issuer who wishes to appeal may, within five days of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE 5.5(a), Maintenance Requirements and Delisting Procedures.

[4] *See* PCXE 5.5(m)(1), Delisting Procedures.

[5] *See* PCXE 5.5(m)(2).

receiving written notice, petition the Secretary of the Corporation for an appeal hearing. The Secretary, in turn, processes the petition and forwards the request, along with the documentary evidence, to the Corporation's Board Appeals Committee, which conducts a special hearing in order to make a final determination on the merits of the issuer's petition.

The Corporation does not currently impose a fee in connection with the appeal of delisting decisions, and consequently, there is no disincentive for frivolous appeals of the Corporation's delisting decisions. This, coupled with the fact that the Corporation expends significant resources in accommodating appeals, has caused the Corporation to incur expenses that it is not capable of recovering. Given the increasing costs associated with an appeal hearing, *i.e.*, the allocation of time incurred by the Corporation's Listing Qualifications Department, the Secretary of the Corporation, Corporation counsel and the Board Appeals Committee, the Exchange proposes to impose hearing fees in order to recoup some of its costs. Accordingly, the Corporation proposes to amend PCXE Rule 5.5(m) to require issuers to submit a fee of $2,500 in order to cover a portion of the cost of an appeal hearing. The proposed rule requires that the issuer submit the fee within five days of receiving written notice of the Corporation's decision to delist a security. During this time frame, the issuer will also be required to submit a written request for a hearing. If the issuer does not submit a hearing fee or a written statement by the time prescribed by the Corporation, the issuer will be deemed to have waived its right to appeal the delisting decision.

The Exchange believes that the proposed fee is fair and reasonable as it is intended to cover only a portion of the Corporation's expenses associated with the processing and hearing of delisting appeals.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)[6] of the Act, in general, and section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments 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 self-regulatory organization consents, the Commission will:

A. By order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2002–05 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3305 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45391; File No. SR–Phlx–2001–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment Nos. 1 and 2 Relating to Solicitation of Trading Interest on the Exchange Floor

February 4, 2002.

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 March 8, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[3] On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the filing to request accelerated approval under section 19(b)(2) of the Act, as opposed to the proposal being immediately effective upon filing under 19(b)(C)(A) of the Act.

[4] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange amended the proposal to clarify that (1) the proposed rule change pertains to an order of a size greater that the AUTO–X guarantee; (2) a single crowd participant may voice a bid or offer that is independent of the trading crowd's collective response; (3) orders under the proposed rule change would be allocated pursuant to Phlx Rule 1014(g); (4) other proposed rule changes have been submitted to further foster competitive quoting among market makers; and (5) the Exchange believes that the proposed rule change should not impact the Quote Rule or the priority of customer orders.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice (''OFPA'') F–32 pertaining to the solicitation of quotations. The following is the text of the proposed rule change:

Additions are in *italics*.

Rule 1033 (a)(*i*) Size of Bid/Offer and Disseminated Size Guarantee. All bids or offers on the Floor for option contracts shall be deemed to be one for one option contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of option contracts. Responsibility for ensuring that customer orders are filled to a minimum of the disseminated size at the disseminated price is as set forth in Exchange Rules 1082 and 1015.

(ii) Solicitation of Quotations. In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

* * * * *

F–32 Solicitation of Quotations

In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Phlx Rule 1033(a)(ii) and OFPA F–32, which would permit the members of a trading crowd (including the specialist and Registered Options Traders (''ROTs'')) to discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices in response to a floor broker's request. The proposal is intended to codify and expressly permit a collective response by trading crowd members.[5]

Ordinarily, in meeting their obligation to make fair and orderly markets, Phlx specialists and ROTs make independent business decisions concerning what market to quote at a particular point in time, in lieu of discussing or agreeing with other members of the trading crowd on what should be the market for a particular option. In order to make fair and orderly markets and to respond efficiently to the needs of investors, however, the Phlx believes that there are circumstances where some coordination among ROTs and specialists is both necessary and beneficial.

For example, when a request for a market to buy or sell a large number of options contracts is presented by the floor broker to the trading crowd, the customer on whose behalf the request is made typically wants to know promptly at what single price all of the options represented by the request may be bought or sold. However, such large trades typically require more liquidity than any single ROT or the specialist is able to provide. Coordinated efforts of the trading crowd are, thus, necessary to respond to such a request and to fill any resulting order to buy or sell the option at a single price. In this regard, borrowing a phrase from corporate principles, the Phlx believes that the trading crowd is properly viewed as a ''joint venture,'' in which the resources of the individual crowd members are combined to produce the necessary liquidity to respond to the needs of investors and to compete effectively with other options exchanges.

When an options order exceeds the size that individual trading crowd members can execute, the Phlx believes that the trading crowd must act as a joint venture or single economic unit. In this situation, the trading crowd must reach agreement on the price they will offer because the customer desires a single price. Significantly, in the Exchange's view, the antitrust laws permit competitors to collaborate to produce and sell a product that they could not otherwise offer individually.[6] In fact, such activity is pro-competitive because it increases output and increases the number of competitors.[7]

Moreover, under the proposed rule change, Phlx Rule 1033(a)(ii) and OFPA F–32 would not force members of the trading crowd into the ''joint venture,'' and would not preclude price competition among members of the crowd or competition between a single crowd member and the rest of the crowd.[8] If any one ROT is willing to execute a trade at a price better than the

[5] On September 11, 2000, the Commission issued an order in relation to the settlement of *In the Matter of Certain Activities of Options Exchanges,* which requires the Exchange (as well as the other options exchanges) to implement certain undertakings. One such undertaking to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class. This proposed rule change is intended to effect the changes required by this undertaking. *See* Section IV.B.j. of Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[6] *See, e.g., NCAA* v. *Board of Regents,* 468 U.S. 85, 101 (1984) (recognizing that horizontal restraint on competition was essential to make the product available at all); *Broadcast Music, Inc.* v. *CBS,* 441 U.S. 1, 23 (1979) (''Joint ventures and other cooperative arrangements are also not usually unlawful, at least not as price-fixing schemes, where the agreement on price is necessary to market the product at all.''); and *SCFC ILC, Inc.* v. *Visa USA, Inc.,* 36 F.3d 958, 964 (10th Cir. 1994), *cert. denied.,* 115 S. Ct. 2600 (1995) (''horizontal restraint may be essential to create the product in the first instance'').

[7] The Phlx believes that the Antitrust Division of the Department of Justice and the Federal Trade Commission, agencies expert in competition analysis, also recognize this result. *See* FTC/DOJ Antitrust Guidelines for Collaborations among Competitors (April 2000) at 14, reprinted in *Antitrust Rep.,* April 2000 (also available at *www.ftc.gov.*) (''Competitor collaborations may involve agreements jointly to sell, distribute, or promote goods and services that are either jointly or individually produced. Such agreements may be pro-competitive, for example, where a combination of complementary assets enables products more quickly and efficiently to reach the marketplace.'').

[8] *See* note 4, *supra.* Amendment No. 2 amends the proposed rule language to clarify that individual trading crowd members can voice bids or offers that are independent of the trading crowds collective response and also indicates that other proposed rule changes have been submitted to the Commission to foster competitive pricing.

prevailing market, the ROT could bid against the crowd and take the entire trade, as provided by Phlx Rule 1014(g)(i). If one or more ROTs have the necessary liquidity and believe that they can profit by taking order flow away from the crowd by independently offering a better price to the floor broker, they are free to do so.[9] Thus, the Phlx believes that when read together with existing Phlx rules, Phlx Rule 1033(a)(ii) and OFPA F–32 are well designed to enable the Exchange to provide the required liquidity to execute large orders, while retaining the potential for price competition from ROTs in the crowd.

Finally, the Phlx notes that unlike an exchange with a single specialist and no competing market makers, the Phlx's market structure requires that this activity be permitted so as to allow the Phlx to better compete with the other options exchanges and better serve the investing public

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by enhancing the Exchange's ability to make competitive, fair and orderly markets. Moreover, the Exchange believes that the proposal responds to the needs of investors by facilitating prompt and efficient order execution, while promoting fair competition, consistent with Section 11A(a)(i) and (ii).[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[9] In assessing the competitive effects of a joint venture, the antitrust agencies regard the continued ability for individual members of the joint venture to compete against the venture as an important factor weighing toward its lawfulness. FTC/DOJ Antitrust Guidelines for Collaborations among Competitors at 19 (''In general, competitive concern likely is reduced to the extent that participants have actually continued to compete, either through separate, independent business operations or through membership in other collaborations, or are permitted to do so.'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(i) and (ii).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Phlx 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–33 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3303 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3391]

State of Tennessee

Maury County and the contiguous Counties of Giles, Hickman, Lawrence, Lewis, Marshall and Williamson in the State of Tennessee constitute a disaster area due to damages caused by heavy rains and flooding that began on January 22, 2002 and continued through January 25, 2002. Applications for loans for physical damage may be filed until the close of business on April 8, 2002 and for economic injury until the close of business on November 6, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 339106 and for economic injury the number is 9O4200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 6, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3374 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No.: 05/05–0219]

Capital Fund, Inc.; Notice of Surrender of License

Notice is hereby given that *Capital Fund, Inc., located at P.O. Box 80225, Lansing, MI 48908–0225,* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Capital Fund, Inc. was licensed by the

Small Business Administration on September 8, 1993.

Under the authority vested by the Act and pursuant to the regulations promulgate thereunder, the surrender of the license was accepted on February 4, 2002, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 5, 2002.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–3375 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Renewal of Regional Resource Stewardship Council

Pursuant to the Federal Advisory Committee Act (FACA) and 41 CFR 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Regional Resource Stewardship Council (Council) has been renewed for a two-year period beginning February 3, 2002. The Council will provide advice to the Tennessee Valley Authority (TVA) on issues affecting TVA's natural resource stewardship activities.

Numerous public and private entities are traditionally involved in the stewardship of the natural resources of the Tennessee Valley region. It has been determined that the Council continues to be needed to provide an additional mechanism for public input regarding stewardship issues.

Further information regarding this advisory committee can be obtained from Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: January 23, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 02–3307 Filed 2–11–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2; Notice No. 13]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts—Extension of Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols.

SUMMARY: FRA amends its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). The only amendment to this document is the second extension of a previously granted exception that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. This exception now runs until April 5, 2002.

DATES: The amendments to the Order are effective February 12, 2002.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web Site (*www.dms.dot.gov*) and click on the ''Help'' menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In five subsequent notices, FRA amended the Order to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; and 66 FR 57771, November 16, 2001.

Background

FRA is making the amendment to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the sole amendment to this Order is to extend temporary operating protocols for MBTA that had expired on February 1, 2002. The amendment, which allows these protocols to remain effective until April 5, 2002, will be effective for slightly more than 60 days and is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest. FRA will continue to monitor the progress of MBTA towards equipping, maintaining and scheduling sufficient units to run all trains with operative ACSES.

Final Extension of MBTA Temporary Operating Protocols

In a December 13, 2001 letter, MBTA requested a three-month extension of the temporary operating protocols because of an anticipated inability to equip sufficient locomotives with ACSES by February 1, 2002. At this stage in its development, new ACSES software contains relatively minor modifications from the software installed on already equipped units. FRA therefore expects the parties to this Order to resolve any remaining issues quickly. With this expectation, FRA grants MBTA a final extension of the temporary operating protocols for slightly more than 60 days. During this

interval, MBTA should devote attention to fleet management to ensure that sufficient units are equipped with ACSES by the time this latest and last extension expires on April 5, 2002. Furthermore, MBTA should do its upmost to maximize the use of ACSES equipped units on ACSES territory, ensuring that ACSES equipped locomotives and cab cars are utilized to their full potential in ACSES service. Other than the extension granted above, the temporary operating protocols specified in Notice No. 11 (66 FR 34512, June 28, 2001) remain in effect without change.

Implementation of Data Radio Systems

Finally, FRA notes that, with the inclusion of this amendment, it has granted six requests for relief from the Order's original timetable. The Order requires data radio systems to be installed within one year of ACSES installation. In an August 28, 2001 letter, Amtrak requested that FRA suspend the Order's requirement to enforce temporary speed restrictions with temporary transponders until Amtrak fully implements data radio enforcement. FRA's October 31, 2001 response asked Amtrak to justify more fully this request to suspend positive protection for roadway workers. While Amtrak has yet to respond to the FRA letter, this latest request for relief highlights that Amtrak is in arrears in its commitment to install data radios. FRA is aware of the financial issues facing Amtrak and other parties to this Order, but the parties must commit fully to the extended deadlines for completion of ACSES design and implementation.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Paragraph 11 is amended as follows:

11. *Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols.*

(a) Effective upon February 12, 2002 until April 5, 2002, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

Issued in Washington, DC, on January 31, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–3390 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2001–10903]

Commercial War Risk Hull and Protection and Indemnity Insurance on Title XI Mortgaged Vessels Operated Exclusively on the Inland Rivers and Intercoastal Waterways of the United States and on the Great Lakes

AGENCY: Maritime Administration, Transportation.

ACTION: Final policy review.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, U.S. Department of Transportation, Maritime Administration, Director, Office of Insurance and Shipping Analysis, Telephone (202) 366–2400, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

SUMMARY: The Maritime Administration (MARAD) has for the time being determined that it will continue to follow its current long-standing policy that waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels which operate exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. MARAD, however, retains the option to rescind or revise the current waiver policy and to impose the full war risk cover on all Title XI vessels in the future, if MARAD determines that circumstances warrant.

SUPPLEMENTARY INFORMATION: MARAD published a Notice in the **Federal Register** on October 30, 2001, (66 FR 54799) Docket No. MARAD 2001–10903, with respect to the waivers of commercial war risk insurance granted operators of Title XI mortgaged vessels operated exclusively on the U.S. inland waters/Great Lakes, requesting comments by November 13, 2001. The Notice stated that some experts were predicting a possible marine threat, either as a means or as a target or both, if another terrorist attack were to occur against the United States. In light of this and the September 11th events, the Notice stated that MARAD believed it should revisit the existing inland/Great Lakes war risk insurance waiver policy and request public comment on whether MARAD should change its current waiver policy. It was noted that MARAD has the authority to rescind or revise the existing waiver policy and to impose the full war risk cover on all Title XI vessels, if MARAD determines that it is now necessary.

The Notice indicated that MARAD currently waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels, which are operated exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. This policy was approved by the Assistant Secretary of Commerce for Maritime Affairs on June 30, 1971, and has remained in effect ever since. Most Title XI companies operating exclusively inland or on the Great Lakes have taken advantage of this waiver. MARAD estimates that approximately 20 companies with over 500 vessels (including a large number of inland barges) are not insured for war risk.

The Notice stated that the standard war risk insurance policy covers a number of non-marine peril risks, including warlike operations, strikes, civil unrest and acts of terrorism. The Notice pointed out that the basic underlying assumption for the war risk waiver for inland water/Great Lakes was that the threat of attack within the continental 48 states or Great Lakes was very slight. The Notice stated that the events of September 11, 2001, called this basic assumption into question.

The Notice concluded that as a consequence, MARAD may begin to require that some or all of the inland Title XI vessels have war risk cover, although MARAD may not require war risk cover for all inland Title XI vessels because significant groups or fleets of inland barges are widely dispersed on the inland waters at any point in time. The Notice stated that this wide distribution limits our inland/Great Lakes Title XI exposure; therefore, the risk of significant loss from any one event or target may be relatively small.

Timely comments to the Notice of October 30, 2001, were received by November 13, 2001, from American Steamship Company; Lake Carriers' Association; and Canal Barge Company, Inc. By letter dated December 13, 2001, Alter Barge Line, Inc. also submitted comments. All commenters were opposed to any change in MARAD's current waiver policy for commercial war risk insurance on Title XI mortgaged vessels operated on the inland waterways/Great Lakes. These comments are summarized below:

American Steamship Company (ASC)

ASC recommends that the current waiver policy continue without any modification or changes. Although ASC recognizes that the events of September 11th would cause prudent underwriters to review policies, it believes there is no appreciable increase in the risk to Great Lakes shipping to warrant the cancellation or modification of the current waiver policy. Great Lakes vessels are relatively slower moving vessels, dispersed throughout the Great Lakes region, carrying relatively low value non-strategic cargoes such as iron ore and aggregate to U.S. and Canadian ports. ASC states that it has carefully considered the current risks to vessels operating on the Great Lakes, that there has been no significant change to these risks for the reasons cited above, and no change in the current waiver policy is necessary.

Lakes Carriers' Association (LCA)

LCA represents 12 American corporations operating 56 U.S.-flag vessels exclusively on the Great Lakes. LCA urges MARAD to not require war risk insurance for U.S.-flag lakers with Title XI mortgages. LCA states that while the concept of war risk insurance is certainly valid for vessels that sail in harm's way, the Great Lakes are the sole jurisdiction of two great democracies, the United States and Canada, and are well protected by each nation's Coast Guard. With only one entrance from the oceans, the U.S. and Canadian Coast Guards can inspect all third-flag vessels, so no attacker disguised as a freighter could sneak about the Lakes.

LCA states that the events of September 11th and the attack on the USS COLE have made us aware that the unthinkable is not always so unthinkable, but again, given that lakers carry dry-bulk cargoes, even a suicide attack from a small boat or airplane would not produce a catastrophic explosion and total loss of the vessel. According to LCA, the likelihood of a successful attack is slight, but the current economic plight of America's steel industry has extended to U.S.-flag operators on the Great Lakes. The industry is in a life and death struggle and cannot bear one unnecessary expense. LCA concludes its comments by urging MARAD to continue to waive the requirement for war risk insurance on U.S.-flag Title XI lakers.

Canal Barge Company, Inc. (Canal Barge)

Canal Barge strongly requests that MARAD make no changes in its waiver policy for war risk insurance. Canal Barge states that the risks from non-marine perils such as terrorism or civil unrest remains slight today in view of the significantly increased law enforcement and security precautions that have been taken by federal, state, and local agencies and the maritime industry itself. The wide dispersion of barges and other Title XI mortgaged vessels on the inland/Great Lakes waterways limits the risk of significant loss from any one terrorist or similar event. Canal Barge believes that with little or no change in the risk facing Title XI mortgaged vessels on the inland/Great Lakes waterways, there is no demonstrated need to amend the current waiver policy for Title XI mortgaged vessels operated on the inland/Great Lakes waterways.

Alter Barge Line, Inc. (Alter Barge)

Alter Barge strongly urges MARAD not to change its policy regarding war risk insurance. Alter Barge views are based on the following factors. First, as was discussed in the **Federal Register**, barges are widely dispersed. Alter Barges states that it rarely has more than five barges in the same location. Consequently, the loss from any specific terrorist act would not be significant to MARAD or Alter Barges. Second, Alter Barges believes that inland barges do not present an especially attractive target for terrorists. Such vessels are unmanned, relatively small and inexpensive and carry basic, low cost materials. Third, given the current state of the barge market, the imposition of an additional charge for high-cost, war risk insurance would be an unwanted and unnecessary expense. Lastly, the cost of insurance would erode the attractiveness of Title XI financing versus private financing which does not require this type of insurance.

Conclusion

A possible marine threat, either as a means to carry out an attack or a target or both, is a realistic concern in planning for defense against terrorist activity. Recognizing this, there has definitely been a concerted effort to increase security precautions in the maritime area, particularly with respect to port security and inspection of foreign-flag vessels using U.S. ports with special emphasis on ascertaining the types of cargoes transported.

Several commenters note that the dispersion of barges and other Title XI mortgaged vessels on the inland/Great Lakes waterways limits the risk of significant loss from one terrorist attack. Commenters also note that vessels operating on the inland/Great Lakes waters are not particularly rewarding targets considering the ships and low-valued bulk cargoes carried.

Based on the comments received, the types of vessels and fleets of vessels involved in the Title XI programs on the Great Lakes and inland waters, and the security effort already undertaken, MARAD has determined that it will continue to follow the current long-standing policy that waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels which operate exclusively on the inland rivers and intercoastal waterways of the United States and the Great Lakes for the time being. MARAD, however, retains the option to rescind or revise the current waiver policy and to impose the full war risk cover on all Title XI vessels in the future, if MARAD determines that circumstances warrant.

Dated: February 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–3370 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register

Vol. 67, No. 29

Tuesday, February 12, 2002

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. 01–060–1]

Vector Tobacco; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Tobacco Genetically Engineered for Reduced Nicotine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Vector Tobacco (USA) Ltd., seeking a determination of nonregulated status for tobacco designated as Vector 21–41, which has been genetically engineered for reduced nicotine. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this tobacco presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–060–1, 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. 01–060–1. If you use 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. 01–060–1'' on the subject line.

You may read a copy of the petition for a determination of nonregulated status submitted by Vector Tobacco (USA) Ltd., the environmental assessment, and any comments we receive on this notice of availability 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology Assessments Section, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in Section 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of Section 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On May 1, 2001, APHIS received a petition (APHIS Petition No. 01–121–01p) from Vector Tobacco (USA) Ltd. (Vector), of Durham, NC, requesting a determination of nonregulated status under 7 CFR part 340 for tobacco (*Nicotiana tabacum* L.) designated as Vector 21–41, which has been genetically engineered to produce a very low level of nicotine. The Vector petition states that the subject tobacco should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, Vector 21–41 tobacco has been genetically engineered to express a quinolinic acid phosphoribosyltransferase (QPTase) in the reverse, or antisense position, which disrupts the normal expression of QPTase, a key enzyme in the biosynthetic pathway leading to the production of nicotine and related alkaloids. The effect of this genetic change is to reduce the nicotine levels of nicotine, nor-nicotine, and total alkaloids in the leaves of Vector 21–41 tobacco. The subject tobacco also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes the enzyme neomycin phosphotransferase type II (NPTII) and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens.* The *A. tumefaciens* method was used to transfer the added genes into the parental recipient Burley 21 LA tobacco variety.

Vector 21–41 tobacco has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from a plant pathogen. The subject tobacco has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of this tobacco, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not

present a risk of plant pest introduction or dissemination.

In Section 403 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

In accordance with the regulations in 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for Vector 21–41 tobacco. The EA was 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 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the EA and any comments received on these documents are available for public review, and copies of the petition and the EA may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Vector's reduced-nicotine Vector 21–41 tobacco and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of February 2002.

W. Ron Dehaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–3342 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Quality Incentive Program for Geographic Priority Areas, New Mexico

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, in New Mexico, gives notice that an environmental impact statement is not being prepared for:

Jicarilla Apache Nation (Rio Arriba and Sandoval Counties)

Pueblo of Jemez Tribal Trust Lands (Sandoval County)

Rio Brazos Watershed (Rio Arriba County)

Rincon-Mesilla Valley Irrigated Cropland (Dona Ana and Sierra Counties)

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III, State Conservationist; Natural Resources Conservation Service; 6200 Jefferson, NE; Albuquerque, NM 87109–3734; Telephone (505)761–4400.

Copies of these environmental assessments are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: http://www.nm.nrcs.usda.gov/techserv/ea.htm.

SUPPLEMENTARY INFORMATION: The environmental assessments of these federally assisted action indicates that the projects will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: January 31, 2002.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 02–3286 Filed 2–11–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 020702B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuary Permits.

Form Number(s): None.

OMB Approval Number: 0648–0141.

Type of Request: Regular submission.

Burden Hours: 1,018.

Number of Respondents: 336.

Average Hours Per Response: 1 hour for a general permit application; 15 minutes for a baitfish permit application; 13 hours for a historical resource permit application; 24 hours for a special use permit application; 1 hour for a notification of other agency permits or requests; 15 minutes for a permit amendment; 30 minutes for a request for certification of a pre-existing lease, license or permit; 15 minutes for an entry to a voluntary registry of activities; and 90 minutes for a appeal of an application rejection.

Needs and Uses: National Marine Sanctuary (NMS) regulations list specific activities that are prohibited in the sanctuaries. These otherwise-prohibited activities are permissible if a permit is issued by the NMS program. Persons wanting permits must submit applications, and persons obtaining permits must submit reports on the activity conducted under the permit.

The information is needed by NMS to protect and manage the sanctuaries.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit organizations, and State, Local, or Tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3377 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

[I.D. 020702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Game Fish Tagging Report.

Form Number(s): NOAA Form 88–162.

OMB Approval Number: 0648–0247.

Type of Request: Regular submission.

Burden Hours: 360.

Number of Respondents: 12,000.

Average Hours Per Response: 3 minutes.

Needs and Uses: A fish tagging program in the southeastern United States obtains information on fish growth and movement for use in stock assessments and fishery management activities. Persons who voluntarily tag fish, complete the tagging report to show where and when tagging took place and the type of fish tagged.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3378 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 020702D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0352.

Type of Request: Regular submission.

Burden Hours: 3,079.

Number of Respondents: 1,046.

Average Hours Per Response: 15 minutes per marking.

Needs and Uses: Regulations implementing the Pacific Coast Groundfish Fisheries Management Plan at 50 CFR 660.322(c)(3) specify that federally-permitted vessels are required to mark their fixed-gear with an identifying number. This number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third part disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: , 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–3379 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Stephen Bailey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone: (202) 482–0182, 482–1102, respectively.

SUPPLEMENTARY INFORMATION:

THE APPLICABLE STATUTE

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to the regulations at 19 CFR part 351 (April 2000).

FINAL DETERMINATION

We determine that certain automotive replace glass windshields (''ARG windshields'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margin of sales is shown in the ''Final Margin'' section of this notice.

Case History

We published in the Federal Register the preliminary determination in this investigation on September 19, 2001. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 48233 (September 19, 2001) (''Preliminary Determination''). On October 4, 2001, we published in the Federal Register a postponement of the final determination in this investigation. See Notice of Postponement of Final Determination of Antidumping Duty Investigation: Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 50607 (October 4, 2001).

On September 21, 2001, the Department received timely filed allegations that we made ministerial errors in the preliminary determination from Fuyao Glass Industry Group Company, Ltd, (''FYG'') and PPG Industries, Inc., Safelite Glass Corporation, Apogee Enterprises, Inc., and its subsidiary Viracon/Curvelite, (collectively, ''Petitioners''). We published in the Federal Register the amended preliminary determination in this investigation on October 24, 2001. See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China, 66 FR 53776 (October 24, 2002) (''Amended Preliminary Determination''). Since the publication of the Amended Preliminary Determination, the following events have occurred.

On October 18, 2001, Petitioners submitted a request for a public hearing in accordance with 19 CFR 351.310(c). On October 19, 2001, 2001, FYG submitted a request for a public hearing.

On November 4, 2001 through November 8, 2001, the Department conducted a sales and factors factor of production verification of FYG. On November 12, 2001 through November 16, 2001, the Department conducted sales and factors of production verification of Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''). On December 5, 2001 through December 6, 2001, the Department conducted a sales verification of FYG's U.S. affiliate, Greenville Glass Industries, Inc. (''GGI'').

On December 27, 2001, Petitioners, FYG, Xinyi, Benxun, and TCGI International, Inc. (''TCGI''), submitted their case briefs with respect to the sales and factors of production verification and the Department's Preliminary Determination. On December 27, 2001, Petitioners submitted their case brief with respect to the sales and factors of production verification and the Department's Preliminary Determination. On January 4, 2002, FYG submitted its rebuttal brief with respect to the Department's Preliminary Determination. On January 7, 2002, Petitioners, Xinyi, Benxun and TCGI submitted their rebuttal brief with respect to the sales and factors of production verification and the Department's Preliminary Determination. On January 7, 2002, Changchun Pilkington Safety Glass Company Limited, Guilin Pilkington Safety Glass Company Limited, Wuhan Yaohua Pilkington Safety Glass Company Limited and Shanghai Guangda Trading Company (''the Pilkington Companies'') submitted their rebuttal brief with regard to critical circumstances.

On January 8, 2002, the Department held a public hearing in accordance with 19 CFR 351.310(d)(1). Representatives for Petitioners, FYG, Xinyi, TCGI, and the Pilkington Companies were present. All parties present were allowed an opportunity to make affirmative presentations only on arguments included in that party's case briefs and were also allowed to make rebuttal presentations only on arguments included in that party's rebuttal brief. Also, on January 8, 2002, at Petitioner's request, the Department held a closed hearing, in accordance with 19 CFR 351.310(f), to permit the discussion of issues involving business proprietary information.

Period of Investigation

The period of investigation is July 1, 2000, through December 31, 2000.

Non-Market Economy

The Department has treated the PRC as a non market economy (NME) country in all its past antidumping investigations. See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China, 66 FR 58115 (November 20, 2001). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the Department's Preliminary Determination.

Separate Rates

In our Preliminary Determination, we found that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the Preliminary Determination which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that the respondents should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the Preliminary Determination.

The PRC-Wide Rate

For the reasons set forth in the Preliminary Determination, we continue to believe that use of adverse facts available for the PRC-wide rate is appropriate. See Preliminary Determination, 66 FR at 48237.

Surrogate Country

For purposes of the final determination, we find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Department's Preliminary Determination.

Critical Circumstances

In the Department's Preliminary Determination, we determined that critical circumstances exist for imports of ARG windshields from the PRC manufactured and/or exported by the PRC-wide entity. We, however, preliminarily found that critical circumstances do not exist for FYG, Xinyi, Benxun, TCGI, Changchun, Guilin, and Wuhan based on lack of importer knowledge. For this final determination, we continue to find critical circumstances for imports of ARG windshields from the PRC manufactured and/or exported by the PRC-wide entity. Additionally, because the final calculated margin for FYG is

below 15 percent, the Department's threshold for imputing knowledge of dumping for CEP sales is not met. For Xinyi because the final calculated margin for is below 25 percent, the Department's threshold for imputing knowledge of dumping for EP sales is not met. We therefore do not find critical circumstances with respect to these companies. Furthermore, the weighted-average margin we calculated for the non-mandatory respondents Benxun, TCGI, Changchun, Guilin and Wuhan, is less than either the 25 percent threshold for imputing knowledge for EP sales or the 15 percent threshold for CEP sales. Although the record as to these respondents does not indicate whether their sales were EP or CEP, neither threshold is met. See Notice of Final Determination of Sales at Less Than Fair: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000). Therefore, we do not consider critical circumstances to exist with regard to these non-mandatory respondents. For a discussion of interested party comments on this issue, see Issues and Decision Memorandum for the Less Than Fair Value Investigation of Certain Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 1, 2002 (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room B–099 of the Main Department of Commerce Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the World Wide Web at www.ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding and have surrogate value changes. See Analysis Memorandum Xinyi, Analysis Memorandum for FYG, and Factors of Production Valuation Memorandum for the Final Determination, dated February 1, 2002.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the Preliminary Determination as a result of verification, see Analysis Memorandum for Xinyi and Analysis Memo for FYG.

Scope of Investigation

Interested parties requested that the Department clarify whether ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. Based on the information received, we clarified that ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. For further discussion, please see the Issues and Decision Memorandum for the Scope Clarification for the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Edward C. Yang, Director, Office 9 to Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, dated January 24, 2002.

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouses, for consumption on or after the date of publication of the Amended Preliminary Determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Weighted–average margin (percent)
FYG	9.67
Xinyi	3.70
Benxun	8.22
Changchun	8.22
Guilin	8.22
Wuhan	8.22
TCGI	8.22
China–Wide	124.50

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

February 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

Discussion of the Issues

Petitioners' Issues

Comment 1: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Korea may be Subsidized

Comment 2: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Thailand may be Subsidized

Comment 3: Whether Import Prices Paid by FYG and Xinyi for Float Glass from Korea and Thailand may be Dumped

Comment 4: Whether Xinyi's Prices for Imports of Float Glass From India May be Subsidized

Comment 5: Whether Chinese Prices for Indonesian Float Glass May Be Subsidized and/or Dumped

Comment 6: Whether the Department Should Continue to Use Indian Import Statistics as the Surrogate Value for Float Glass

Comment 7: Whether the Department Should Use as its Surrogate Value the Electricity rate Paid by the Indian Auto Glass Producers

Comment 8: Whether the Department Should Use Actual Molding Prices and Mirror Brackets/Button Prices as the Surrogate Value for Xinyi's Moldings and Mirror Brackets/Buttons

Comment 9: Whether the Department Should Use the Updated Surrogate Value Information Provided by Petitioners for Certain Inputs and Also Use a More Appropriate HTS Number for Scrap Iron Input

Comment 10: Whether the Department Should Calculate Factory Overhead, Selling, General and Administrative Expenses, and Profit in Accordance with Petitioners Proposed Methodology

Comment 11: Whether the Department Should Value the Labor Factor of Production on the Basis of Fully-Loaded Labor Costs

Comment 12: Whether Xinyi's Market Economy Based Inland Freight Expenses Are Controlled by the Chinese Government

Comment 13: Whether the Department Should Make Certain Adjustments to Freight for FYG

Comment 14: Whether Respondents Reported Usage Rates for Float Glass and PVB Are Understated

Comment 15: Whether Respondents Reported U.S. Selling Prices are Reliable

Comment 16: Critical Circumstances

Comment 17: Whether the Scope Includes ARG Windshields for Buses, Recreational Vehicles and Farm Machinery

Comment 18: Whether the Department Used Incorrect Inflation Figures

Company Specific Issues

FYG's Comments

Comment 19: Whether the Department Should Use the Remaining Average Float Glass Costs Specific to the Thickness and Type Required for the CONNUM

Comment 20: Whether the Department Should Calculate the Profit Ratio Based on the 1999–2000 Financial Report of Asahi India Safety Glass Ltd.

Comment 21: Whether the Net Profit Ratio Should be Based on a Simple Average of the Financial Results of Saint-Gobain Sekurit and Asahi

Comment 22: Whether the Asahi India Profit Ratio Contains a Clerical Error

Comment 23: Whether the Department's Calculation of the Factory Overhead Ratio Should Exclude the Cost of Stores and Spare Parts

Comment 24: Whether the Department's Calculation of the SG&A Expense Ratio Contains Errors

Comment 25: Whether Water as Part of Energy in the Cost of Manufacturing Results in Double-Counting

Comment 26: Whether the Department Should Value Water Using the Asian Development Bank Data

Comment 27: Whether the Department Erred in Including U.S. Duty and International Freight Charges Among the CEP Selling Expenses

Comment 28: Whether the Department Double-Counted Molding

Comment 29: Updated Labor Rate for 1999

Comment 30: Surrogate Value for Styrofoam

Comment 31: Whether the Department Should Remove International Freight and Insurance Costs from Indian Surrogate Values

Xinyi's Comments

Comment 32: Whether Market Economy Expenditures Should be Used in Place of Surrogate Values

Comment 33: Verification Issues

Comment 34: Whether Negative Margins Should be Taken into Consideration in Calculating Certain Overall Weighted Average Margins

Comment 35: Whether the Department Should Calculate a Margin for Non-Mandatory Respondent Benxun Based on Its Data

Comment 36: Whether Recent Changes to the Antidumping Statute have Transformed the Law into a Penal Statute, thereby Violating Certain Respondent Parties' Procedural Due Process Rights

[FR Doc. 02–3383 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–860]

Notice of Initiation of Antidumping Duty Investigation: Pneumatic Directional Control Valves from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigation.

EFFECTIVE DATE: February 12, 2002

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Frank Thomson at (202) 482–3836 or (202) 482–4793, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On January 14, 2002, the Department received a petition filed in proper form by the Pneumatics Group (''the petitioners''), consisting of the following parties: Festo Corporation[1], IMI Norgren, Inc., Numatics, Inc., and Parker Hannifan Corporation. The

[1] Produces pneumatic fluid power products, but not pneumatic directional control valves (''PDCVs''), in the United States

Department received information supplementing the petition on January 30, 2002 and January 31, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of PDCVs from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are an interested party, as defined in sections 771(9)(E) and 771(9)(F) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. (See the Determination of Industry Support for the Petition section below.)

Scope of Investigation

The scope of the investigation includes all pneumatic directional control valves, whether assembled or unassembled, regardless of size, configuration, intended or actual use, method of actuation, and material(s) employed in construction, other than aerospace–type fluid power valves as further described below. The subject merchandise thus includes, but is not necessarily limited to, manual, mechanical, air–operated, and solenoid type pneumatic directional control valves.

Specifically excluded from the scope are aerospace–type pneumatic fluid power valves, defined as pneumatic fluid power valves that have been certified for use in airframes, aircraft engines, or other aerospace applications pursuant to standards established or required by the Federal Aviation Administration or Department of Defense in the United States, or by the counterparts of these agencies in other countries.

The subject merchandise is currently classified under subheadings 8481.20.0060 and 8481.20.0070 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Aerospace–type fluid power valves, which are excluded from the scope, are not entered under the subheadings just described, but are instead entered under various other subheadings.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers PDCVs as defined in the Scope of the Investigation section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

On January 25, 2002, the Department received comments regarding industry support from the Japan Fluid Power Association (a majority of whose members, including SMC Corporation, are producers in Japan of PDCVs). On January 29, 2002 and February 1, 2002, the Department received comments regarding industry support from SMC Corporation, a Japanese producer of PDCVs and SMC Corporation of America, a U.S. importer of the subject merchandise (collectively, ''SMC Corporation'').

The Department has reviewed the comments of both the Japan Fluid Power Association and SMC Corporation. In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition and amendments thereto, and Department research. See the Industry Support Attachment to the Import Administration AD Investigation Checklist, dated February 4, 2002 (''Initiation Checklist'') (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) for further description.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition and its supplements, and information gathered through Department research demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who

[2] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) and section 732(c)(4)(D) are met. See Initiation Checklist. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. See Initiation Checklist. Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist.

Period of Investigation

The anticipated period of investigation (''POI'') is January 1, 2001, through December 31, 2001.

Constructed Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the Initiation Checklist.

The Department has analyzed the information in the petition and considers the country–wide import statistics for the anticipated POI and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will re–examine the information and may revise the margin calculation, if appropriate.

Constructed Export Price

The petitioners identified one company that they believe accounts for a substantial majority of imports of subject merchandise from Japan. The petitioners state that this producer sells subject merchandise through its U.S. affiliate. The petitioners based constructed export price (''CEP'') on the affiliate's price list. The list prices include all import charges and duties, but do not include U.S. inland transportation. To arrive at a net–price, the petitioners deducted from the list price an amount for SMC Corporation of America's (''SMC–USA's'') standard–discount. To arrive at ex–factory price, petitioners deducted import charges based on the average import charge reported in U.S. import statistics for entries of the subject merchandise during the last four quarters for which data are available (2000Q4 – 2001Q3). Petitioners made a further deduction for import duties and a deduction to account for SMC–USA's U.S. selling expenses. Petitioners based U.S. selling expenses on the aggregate selling expense ratio experienced by the PDCV–producing members of the Pneumatics Group during the year 2000.[3] The petitioners stated that SMC–USA's selling expense ratio is not publicly available and cannot reasonably be estimated by other publicly available means. Therefore, the petitioners calculated a net U.S. price by subtracting import charges and duties, and U.S. selling expenses. The petitioners provided a publically available selling expense ratio in their January 30, 2002, amendment to the petition. However, because the non–public selling expense ratio provided in the original petition is more conservative, we have continued to use the ratio that was provided in the original petition.

Normal Value

With respect to normal value (''NV''), the petitioners provided home market prices that were obtained from a party in Japan for PDCVs that are comparable to the products exported to the United States which serve as the basis for CEP. Petitioners applied relevant discounts to the yen–denominated price and then converted the net price to U.S. dollars by using exchange rates applicable to the twelve–month period preceding the petition, as published by the Federal Reserve Board. Petitioners did not deduct inland freight from the sales value.

Based on the comparison of CEP to NV, petitioners calculated estimated dumping margins from 9.28 to 107.46 percent. Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing CEP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

[3] The PDCV–producing members of the Pneumatics Group are not publically held companies, therefore it was necessary to aggregate and average these three companies' selling expenses to derive an appropriate ratio.

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioners used in their calculations of U.S. and home market prices and has found that it represents information reasonably available to petitioners supporting the allegation of dumping (see Initiation Checklist).

Based on the data provided by the petitioners, there is reason to believe that imports of PDCVs from Japan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the decline of U.S. producers' output, sales, market share, profits, productivity, return on investment, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petition and have determined that the petition alleges the elements necessary for the imposition of a duty under section 731 of the Act and contains information reasonably available to the petitioners supporting the allegations (see Initiation Checklist, Material Injury section).

Initiation of Antidumping Investigation

Based upon our examination of the petition on PDCVs from Japan and the petitioners' responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See Initiation Checklist. Therefore, we are initiating an antidumping duty investigation to determine whether imports of PDCVs from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. See Case Calendar section of the Initiation Checklist.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Japan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than February 28, 2002, whether there is a reasonable indication that imports of PDCVs from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

February 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–3387 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–351–806]

Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 2001, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. The merchandise covered by this order is silicon metal from Brazil. The review covers four manufacturers/exporters, Rima Industrial SA (Rima), Companhia Ferroligas Minas Gerais - Minasligas (Minasligas), Ligas de Aluminia S.A. (LIASA) and Companhia Carbureto de Calcio (CBCC). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On August 6, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. See Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 66 FR 40980 (August 6, 2001). The review covers four manufacturers/exporters, RIMA, Minasligas, LIASA and CBCC. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. We received comments on November 21, 2001, from Rima, Minasligas, and CBCC (collectively respondents), and from American Silicon Technologies and Elkem Metals Company (collectively petitioners). On December 4, 2001, we received a rebuttal brief from petitioners and Rima, Minasligas and CBCC. On December 31, 2001, we received comments from petitioners concerning the Department's application of section 772(e) of the Act to CBCC's further manufactured sales in the preliminary results. On January 10, 2002, we received rebuttal comments from CBCC. In response to requests by petitioners, we issued a series of supplemental questionnaires to CBCC on January 2, 25 and 29 of 2002. We received supplemental responses from CBCC on January 10, 28 and 30 of 2002. We received comments from petitioners on CBCC's responses on February 1, 2002. We received comments from CBCC on petitioners comments on February 4, 2002. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 (''B–099'') of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the ''Decision Memorandum,'' accessible in B–099 and on the Web at www.ita.doc.gov/import admin/records/frn/.

1. We recalculated Minasligas' home market imputed credit expense using a corrected formula.

2. We corrected the conversion of Minasligas' U.S. inland freight expense.

3. We recalculated Minasligas' home market credit expense using a surrogate interest rate.

4. We recalculated Minasligas' imputed U.S. credit expense using the date of liquidation as the date of payment.

5. We set Minasligas' negative imputed U.S. credit expenses equal to zero.

6. We recalculated the financial expense ratio in CBCC's cost of production (COP) using total financial expenses without any reduction for ''financial income.''

7. We included interest revenue in the calculation of CBCC's net home market price.

8. We corrected the margin program to properly calculate CBCC's margin pursuant to the special rule.

9. We recalculated CBCC's home market credit expense using a surrogate interest rate.

10. We recalculated CBCC's home market imputed credit expense using the date of shipment from the factory as the date of shipment.

11. We recalculated Rima's general and administrative (G&A) expense ratio using its G&A expenses and annual cost of goods sold as reported on its financial statements.

12. We recalculated Rima's financial expense ratio using its financial expenses and annual cost of goods sold as reported on its financial statements.

13. We recalculated Rima's CV to include an amount for profit.

14. We converted Rima's gross unit price into the proper currency to calculate net U.S. price.

15. We recalculated Rima's home market selling expenses to divide by total cost.

16. We converted CBCC and Rima's U.S. packing costs into U.S. dollars.

17. We recalculated LIASA's home market credit expense using a surrogate interest rate.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
RIMA	0.35
MINASLIGAS	1.23
LIASA	0.00
CBCC	0.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. To calculate assessment rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.10 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Minasligas

Comment 1: Short-Term Interest Rate
Comment 2: Advanced Exchange Contracts (ACCs) and Payment Dates
Comment 3: Duty Drawback
Comment 4: Offset to Financial Expense
Comment 5: Calculation of Home Market Imputed Credit Expense
Comment 6: Double Conversion of Inland Freight
Comment 7: COS Adjustment for PIS/COFINS
Comment 8: Duty Drawback and ICMS and IPI Taxes

CBCC

Comment 9: Shipment Date
Comment 10: Consolidated Financial Statement
Comment 11: Financial Expense Ratio
Comment 12: Short-Term Income Offset
Comment 13: Interest Revenue
Comment 14: Nature of Sales to an Unaffiliated Customer for Purposes of Determining anAppropriate and Reasonable Surrogate for Purposes of Section 772(e) of the Act

Comment 15: Related-party Transactions and Failure to Examine Documents at Verification
Comment 16: Calculation of EP for Use As a Surrogate Price Under Section 772(e) of the Act
Comment 17: Application of Special Rule in Margin Program
Comment 18: Calculation of Home Market Imputed Credit Expenses
Comment 19: Constructed Export Price (CEP) Profit

Rima

Comment 20: Major Input Rule
Comment 21: G&A Expenses
Comment 22: Net Financial Expenses
Comment 23: ICMS, IPI and CV
Comment 24: CV Profit
Comment 25: Currency
Comment 26: Home Market Selling Expenses
Comment 27: Commercial Quantities
Comment 28: Unreviewed and Intervening Years
Comment 29: Aggregate Sales and Commercial Quantities
Comment 30: Impermissible Rule Making and Violation of the APA with Respect toCommercial Quantities

Rima and CBCC

Comment 31: Home Market Credit and ICMS
Comment 32: Conversion of U.S. Packing Costs

[FR Doc. 02–3384 Filed 2–11–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip from Mexico.

SUMMARY: On August 8, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (66 FR 41523). This review covers one manufacturer/exporter, Mexinox, S.A. de C.V. (Mexinox) of the subject merchandise to the United States during the period January 4, 1999 to June 30, 2000. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

Background

On August 8, 2001, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period January 4, 1999 through June 30, 2000. See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review (66 FR 41523). In response to the Department's invitation to comment on the preliminary results of this review, Mexinox and Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethelehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, Zanesville Armco Independent Organization, Inc. (collectively, petitioners) filed their case briefs on September 24, 2001 and their rebuttal briefs on October 9, 2001. At the request of respondent, we held a public hearing on October 17, 2001. On November 15, 2001, we published in the Federal Register our notice of the extension of time limits for this review (66 FR 57418). This extension established the deadline for this final as February 4, 2002.

Period of Review

The period of review (POR) is January 4, 1999 through June 30, 2000.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled

stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary,

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations:

• We recalculated home market credit expenses using a U.S. dollar short-term interest rate for those home market sales invoiced in U.S. dollars.
• We have classified all of Mexinox's U.S. sales as constructed export price (CEP) sales.
• We have calculated imputed credit expenses for certain U.S. sales that were unpaid based on the average payment period for sales with reported payment dates.
• As a result of applying the major inputs analysis to Mexinox's reported material costs, we have made an adjustment to those costs.
• We have recalculated Mexinox's general and administrative (G&A) expense ratio to include G&A expenses incurred by Mexinox on behalf of its home market affiliated reseller, Mexinox Trading, and an additional cost of labor expense.
• We included the entered value of subject merchandise entered for consumption in the United States but sold to unaffiliated parties outside the United States in the denominator of the assessment rate.

We have also corrected certain programming and clerical errors made in our preliminary results, where applicable. These changes are discussed in the relevant sections of the Decision Memorandum, accessible in room B–099 and on the Web at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Mexinox	2.26

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 30.85 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix–Issues in Decision Memorandum

Adjustments to Normal Value

Comment 1: Indirect Selling Expenses Incurred in the Home Market
Comment 2: Circumstances of Sale Adjustment to Normal Value
Comment 3: Imputed Credit on Home Market Sales Denominated in U.S. Dollars

Adjustments to United States Price

Comment 4: U.S. Packing Costs
Comment 5: Duty Drawback
Comment 6: Date of Payment for Certain Ken-Mac Resales

Cost of Production

Comment 7: Major Input Rule
Comment 8: Fixed Overhead Expenses
Comment 9: General & Administrative Expenses
Comment 10: Interest Expenses

Home Market Downstream Sales

Comment 11: Use of Sales by Mexinox Trading in the Calculation of Normal Value

Level of Trade

Comment 12: Classification of Certain U.S. Sales as Export Price or Constructed Export Price
Comment 13: Constructed Export Price Offset

Margin Calculations

Comment 14: Zeroing Negative Dumping Margins

Assessment Rates

Comment 15: Assessment Rate Methodology

Ministerial Errors

Comment 16: Weight Bases Used to Calculate the Difference-in-Merchandise Adjustment
Comment 17: Weight Bases Used to Calculate Extended Entered Values for Ken-Mac Metals, Inc. (Ken-Mac) and Copper & Brass Sales, Inc. (CBS)
Comment 18: Weight Conversion Factor
Comment 19: Application of Corrections from the Ken-Mac Sales Verification to CBS' Resales
Comment 20: Application of Neutral Facts Available to Ken-Mac's ''Unattributable'' Sales
Comment 21: Model Match Formatting Errors

[FR Doc. 02–3385 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 8, 2001, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. This review covers one manufacturer/exporter. The period of review (''POR'') is January 4, 1999 through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3434, or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives). [5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A. Spetrini, Deputy Assistant Secretary, for Import Administration, Group III to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test for Ugine in these final results of review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the *Web at http://ia.ita.doc.gov.*

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/manufacturer/exporter	Weighted-average margin (Percent)
Ugine	3.11

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of stainless steel sheet and strip in coils from France entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.38 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France,* 64 FR 40562 (July 27, 1999).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of doubled antidumping and countervailing duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 7, 2002.

Faryar Shirzad,

Assistant Secretary, for Import Administration.

Appendix

Issues in Decision Memo

Comments and Responses

General Comments

1. Inclusion of Affiliate U.S. sales
2. Home Market Downstream Sales
3. Negative Margin sales in calculating the antidumping duty margin
4. U. S. commission rate for certain U.S. sales by Hague Steel
5. Foreign Inland Freight
6. CEP Profit
7. Further Manufacturing sales
8. Commission offset and CEP offset
9. Home Market Surcharges
10. Inadvertent computer programming error

[FR Doc. 02–3386 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative review of stainless steel sheet and strip in coils from Japan.

SUMMARY: On August 8, 2001, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan. This review covers one manufacturer/exporter. The period of review (''POR'') is January 4, 1999 through June 30, 2000.Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or James C. Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–0409, or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001). *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295 (May 19, 1997).

Background

On August 8, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan*, 66 FR 41543 (August 8, 2001). This review covers one manufacturer/exporter. The POR is January 4, 1999 through June 30, 2000. We invited parties to comment on our preliminary results of review. On September 21, 2001, both respondent, Kawasaki Steel Corporation (''Kawasaki''), and petitioners timely filed their case briefs in this administrative review. On September 28, 2001, Kawasaki and petitioners timely filed their rebuttal briefs. On November 30, 2001, the Department fully extended the time limit for issuing the final results of this administrative review to February 4, 2002. *See Extension of Time Limit for the Final*

Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan, 66 FR 63364 (December 6, 2001). The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Upon completion of four changed circumstances reviews pursuant to section 751(b) of the Act and section 351.216 of the Department's regulations, we have excluded certain products from the scope of the order. These four excluded products are identified in the scope, infra.

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219130031, 7219130051, 7219130071, 7219130081[1], 7219140030, 7219140065, 7219140090, 7219320005, 7219320020, 7219320025, 7219320035, 7219320036, 7219320038, 7219320042, 7219320044, 7219330005, 7219330020, 7219330025, 7219330035, 7219330036, 7219330038, 7219330042, 7219330044, 7219340005, 7219340020, 7219340025, 7219340030, 7219340035, 7219350005, 7219350015, 7219350030, 7219350035, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220121000, 7220125000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220207005, 7220207010, 7220207015, 7220207060, 7220207080, 7220208000, 7220209030, 7220209060, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent

[1] Due to changes to the HTS numbers in 2001, 7219130030, 7219130050, 7219130070, and 7219130080 are now 7219130031, 7219130051, 7219130071, and 7219130081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36''' is a trademark of Imphy, S.A.

or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Also excluded are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (''AWS'') specification ANSI/AWS A5.9–93. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 17856 (April 5, 2000). The products are 0.5 mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER308L, ER 309L, ER 316L and ER347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon	0.03% maximum
Chromium	20.0–22.0%
Nickel	10.0–12.0%
Molybdenum	0.75% maximum
Manganese	1.0–2.5%
Silicon	0.65% maximum
Phosphorus	0.03% maximum
Sulphur	0.03% maximum
Copper	0.75% maximum
Columbium	8 times the carbon level minimum - 1.0% maximum

Also excluded is certain stainless steel used for razor blades, medical surgical blades, and industrial blades, and sold under proprietary names such as DSRIK7, DSRIK8, and DSRIK9. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 54841 (September 11, 2000). This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1.000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight: Carbon 0.65% to 1.00%, Silicon 1.00% maximum, Manganese 1.00% maximum, Phosphorus 0.35% maximum, Sulfur 0.25% maximum, Nickel 0.35% maximum, Chromium 0.15% maximum, Molybdenum 0.30% maximum.

Also excluded is certain stainless steel lithographic sheet. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part*, 65 FR 64423 (October 27, 2000). This sheet is made of 304–grade stainless steel and must satisfy each of the following fifteen specifications. The sheet must have: (1) an ultimate tensile strength of minimum 75 KSI; (2) a yield strength of minimum 30 KSI; (3) a minimum elongation of 40 percent; (4) a coil weight of 4000–6000 lbs.; (5) a width tolerance of -0/+0.0625 inch; and (6) a gauge tolerance of +/-0.001 inch. With regard to flatness, (7) the wave height and wave length dimensions must correspond to both edge wave and center buckle conditions; (8) the maximum wave height shall not exceed 0.75 percent of the wave length or 3 mm (0.118 inch), whichever is less; and (9) the wave length shall not be less than 100 mm (3.937 inch). With regard to the surface, (10) the surface roughness must be RMS (RA) 4–8; (11) the surface must be degreased and no oil will be applied during the slitting operation; (12) the surface finish shall be free from all visual cosmetic surface variations or stains in spot or streak form that affect the performance of the material; (13) no annealing border is acceptable; (14) the surface finish shall be free from all defects in raised or depression nature (e.g., scratches, gouges, pimples, dimples, etc.) exceeding 15 microns in size and with regard to dimensions; and (15) the thickness will be .0145+/-.001 and the widths will be either 38'', 38.25'', or 43.5'' and the thickness for 39'' material will be .0118 +/-.001 inches.

Also excluded is nickel clad stainless steel sheet and strip in coils from Japan. See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part, 65 FR 77578 (December 12, 2000). This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm to 540 mm; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickel cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon 0.02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81,

[4] ''Durphynox 17''' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5''' and ''GIN6''' are the proprietary grades of Hitachi Metals America, Ltd.

Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material is sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the HTS.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home market below-cost sales that failed the cost test for Kawasaki in the final results of this review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in programming. Discussion of these changes in programming are discussed in the relevant sections of the Decision Memo, accessible in B–099 and available on the Web at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/Manufacturer/Exporter	Weighted-Average Margin
Kawasaki Steel Corporation	1.92%

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to the export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for the importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 40.18 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 40565 (July 27, 1999).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

February 4, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

General Issues:

Comment 1: Negative Dumping Margins
Comment 2: Currency Conversion of Advertising Expenses
Comment 3: Choice of Home Market CONNUM
Comment 4: Home Market Sales Reporting Period
Comment 5: Grade Codes
Comment 6: Downstream Sales
Comment 7: Coil Reporting Errors
Comment 8: Post-Shipment Revisions
Comment 9: U.S. Market Database

[FR Doc. 02–3382 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC).

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of Meeting.

SUMMARY: The APAC will have a closed meeting on February 27, 2002 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on February 6, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the February 27 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: February 7, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–3371 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Mary Clague, 301–975–4188, National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[Docket No.: 97–017C–CIP]

Title: Domain Engineered Ferroelectric Optical Radiation Detector Having Multiple Domain Regions For Acoustic Dampening.

Abstract: The invention comprises a pyroelectric detector with significantly reduced microphonic noise sensitivity comprising a pyroelectric detector element constructed from a z-cut $LiNbO_3$ electret. Selective domain reversal is accomplished in the electret by applying an electric field. Electrodes are attached to either surface of the electret spanning the domain reversed region and a portion of the original domain region to create areas of equal and opposite sensitivity. The detector is mounted in an electrically grounded container or housing. The detector may also be constructed having multiple detector regions to accommodate resonant frequencies of the electret or to function as a position sensor.

[Docket No.: 00–005US]

Title: Cavity Ringdown Spectroscopy System Using Differential Heterodyne Detection.

Abstract: This invention is jointly owned by the University of Colorado and the Department of Commerce. The Department's interest is available for licensing. An ac technique for cavity ringdown spectroscopy permits 1×10^{-10} absorption sensitivity with microwatt light power. Two cavity modes are provided temporarily out of phase such that when one mode is decaying, the other mode is rising. When one of the modes probes intra-cavity absorption of a sample gas, heterodyne detection between the two modes reveals dynamic time constants associated with the cavity and the cavity plus intra-cavity absorption. The system and method provides a quick comparison between on-resonance and off-resonance modes and enables sensitivities that approach the shot-noise limit.

[Docket No.: 01–001US]

Title: Sensitive and Selective Chemical Sensor with Nanostructured Surfaces.

Abstract: The invention was made jointly by scientists from NIST and Informed Diagnostics, Inc. under the auspices of a Cooperative Research and Development agreement(CRADA). A novel chemical sensor is described that utilizes an optical resonator with nanostructured surfaces to permit highly sensitive and selective chemical detection by absorption spectroscopy, typically in the visible spectral region. The analyte is not required to possess a significant absorption cross section at the probe wavelength. Instead, the absorption of one or more nanoparticles that are bound to the resonator surface is detected. These nanoparticles have an enormous absorption cross section, which is highly sensitive to the dielectric properties of the particle or its environment. The analyte is detected by combining the sensitive optical response of the nanoparticle with selective chemical interactions that modify the dielectric properties of the particle or its environment. These selective interactions can occur by (1) a direct chemical interaction between the nanoparticle and the analyte that alters the nanoparticle optical constants, or (2) employing a coated nanoparticle that selectively binds the analyte to produce an effective coating refractive index change. The nanoparticles can be formed from gold, silver, cadmium sulfide, zinc selenide, or other material and have a spherical, spheroidal, tetrahedral, or other shape. Typically,

metal or semiconductor particles are employed which support a surface plasmon polariton resonance (SPPR). The nanoparticles modify one or more surfaces of an optical resonator where a light beam interrogates the absorption change in response to the analyte. In one embodiment, the nanoparticles modify one or more ultra-smooth surfaces of a high-finesse resonator that employs intracavity total internal reflection, allowing evanescent wave cavity ring-down spectroscopy (EW–CRDS) to be employed for probing the absorbance change. Through proper choice of nanoparticle density, size, shape, material, coating, and resonator design, a miniature chemical sensor is achieved, permitting trace detection of a wide range of absorbing or non-absorbing analytes in the gas or liquid phase.

Dated: February 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–3314 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000411102-2008–04; I.D. 010202B]

RIN 0648–ZA85

Financial Assistance for Community-based Habitat Restoration Projects

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-Based Restoration Program (CRP). This document describes the conditions under which applications (project proposals) will be accepted under the CRP, and describes criteria under which applications will be evaluated for funding consideration. Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a project grant, cooperative agreement, or interagency transfer.

DATES: Applications for funding under the CRP will be accepted upon publication of this document in the **Federal Register** and must be received by or postmarked by April 15, 2002. Applications received or postmarked after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Applications delivered by a delivery service after the postmark date will be accepted for review if the applicant can document that the application was provided to the delivery service on or prior to the specified postmark cut-off date. In any event, applications received later than 15 business days following the closing date will not be accepted. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Project Applications.

See **SUPPLEMENTARY INFORMATION** section under *Electronic Access* for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local level to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, state, and Federal agencies to cooperatively implement habitat restoration projects. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally-important living marine resources, as well as develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that communities can play in habitat restoration, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see *Electronic Access*.

II. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666, to provide grants or cooperative agreements for fisheries habitat restoration.

III. Catalogue of Federal Domestic Assistance

The CRP is described in the ''Catalogue of Federal Domestic Assistance,'' under program number 11.463, Habitat Conservation.

IV. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Due to a significant

increase in funding that became available to the CRP starting in FY 2001, applications from Federal agencies will be considered. Although Federal agencies are eligible to apply under this solicitation, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply, rather than seeking project funding directly from the CRP. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/NOAA encourages proposals for habitat restoration projects involving MSIs according to the criteria in this document.

V. Eligible Restoration Activities

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passageway; natural or artificial reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth areas essential to marine or anadromous fish. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used or formerly used by anadromous fish. Priorities for habitat restoration activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources.

To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects on permanently protected lands may be given priority consideration.

Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular restoration component, such as only outreach or program coordination are discouraged, as are applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead and travel. The CRP anticipates the availability of funds for high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration. Proposals emphasizing science-based monitoring of existing or simultaneously proposed CRP projects are encouraged.

Although NOAA recognizes that water quality issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects rather than direct water quality improvement measures, such as wastewater treatment plant upgrades or combined sewer outfall improvements. Similarly, the following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, and (3) activities that are required by a separate consent decree, court order, statute or regulation. Funds from the CRP may be sought to enhance restoration activities beyond the scope legally required by these activities. As a matter of CRP policy, funding land purchase agreements and conservation easements will be a low priority.

VI. Funding Availability

This solicitation announces that funding of up to $2,000,000 will be available for community-based habitat restoration projects in FY 2002. The NOAA Restoration Center anticipates that typical project awards will range from $50,000 to $200,000; NOAA will not accept proposals for under $20,000 or proposals for over $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating restoration projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the CRP by Congress. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

VII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible; applicants with less than 1:1 match will not be disqualified.

For non-Federal applicants, the match can come from a variety of public and private sources and can include in-kind goods and services; cash match is highly encouraged. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

VIII. Award Period

Generally, the CRP will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 18 months from the approved start date of the project. If an application is selected for funding, NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

IX. Electronic Access

Information on the CRP, including examples of community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community/index.html*.

The standard NOAA application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Applicants are encouraged to contact the NOAA Restoration Center to request an application package that contains instructions for submitting NOAA standard grants applications and supplementary instructions specific to the NOAA Community-Based Restoration Program.

X. Application Process

To submit a proposal, a complete NOAA standard grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: Cover sheet-an applicant must use Office of Management and Budget (OMB) Standard Form 424 as the cover sheet for each project; budget detail (SF 424A and budget justification narrative); grant assurances SF424B and CD-511, and SF-LLL and CD-346 if applicable; and narrative project description (statement of work). Budgets should include a detailed breakdown by category of cost (object class) separated into Federal and non-Federal shares as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

In general, applications should clearly demonstrate the broad-based benefits expected to specific habitats, and how these benefits will be achieved through the proposed restoration activities. The narrative project description should be no more than 10 double-spaced pages long, in 12–point font, and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short- and long-term objectives and goals, the methods for carrying out and monitoring the project, and the project's relevance to enhancing habitat to benefit living marine resources. The project narrative should describe the organizational structure of the applicant group, detail its qualifications, and identify proposed project staff; participants (project partners) other than the applicant, and their contributions should be identified. Applicants should indicate if the project has been submitted for funding consideration elsewhere, whether the funds requested are Federal or non-Federal, and what amount has been requested or secured from other sources. The need for assistance should be demonstrated, and the narrative should provide assurance that all necessary environmental permits and consultations will be secured prior to the use of Federal funds for construction. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. All incomplete applications will be returned to the applicant. Three copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional copies (seven are needed for reviewing purposes) if it does not cause a financial hardship. Applications for multiple projects submitted by the same applicant must be submitted in separate envelopes.

XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XII. Project Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the NOAA Grants Management Division, the U.S. Department of Commerce, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well applications meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC.

Applications for habitat restoration projects will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and composite project ranks will be presented to the Director of the

NOAA Restoration Center (Director). The Director, in consultation with CRP staff, will consider the evaluations and may take into account the following: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed activities with other projects that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers that would affect achievement of the CRP's objectives as described in this announcement and the CRP Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, awards may not necessarily be made to the highest scored proposals. The Director, in consultation with CRP staff, will select the proposals to be recommended to the Grants Management Division for funding and determine the amount of funds available for each approved proposal. Unsuccessful applicants will be notified in writing that their proposal was not among those selected for funding, and unsuccessful applications will be kept on file until the close of the current fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA CRP staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 60 days after the close of this solicitation. The earliest date for receipt of awards will be approximately 120 days after the close of this solicitation, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed restoration activities.

XIII. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 to 60 points based on the following four evaluation criteria and respective weights.

(1) Potential of the Project to Benefit Living Marine Resources (15 points)

Proposals will be evaluated on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. In particular, NOAA will evaluate proposals based on the amount and type of habitat proposed for restoration and the potential of the applicant to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship; whether the habitat(s) to be restored will benefit commercial, recreational, threatened or endangered species; whether the proposal addresses a priority habitat, restoration need, special consideration, or is part of a watershed or community stewardship plan; whether the effects of restoration are expected to persist; and whether the proposed project will complement or encourage other local restoration activities. Proposals for science-based monitoring of existing or simultaneously proposed CRP projects will be evaluated on the extent to which the potential results advance restoration methods, techniques and project implementation.

(2) Technical Merit and Adequacy of Project Implementation Plan (15 points)

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects. Communities and/or organizations developing their first locally-driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion.

Proposals also will be evaluated on the adequacy of the implementation plan and the applicant's ability to: deliver the restoration objective stated in the proposal; demonstrate that the restoration activity will result in tangible benefits and will be sustainable and long-lasting; provide for long-term management of the restored resource, including adequate monitoring and a method for evaluating project success; and provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining or proceeding to obtain applicable permits and consultations. Projects on permanently protected lands may be given priority consideration.

(3) Community Commitment and Partnership Development (15 points)

Proposals will be evaluated on activities proposed to involve citizens and broaden their participation in habitat restoration or science-based monitoring and the depth and breadth of community support, as reflected by the diversity and strength of project partners. Community participation may include: (a) hands-on training, restoration and monitoring activities undertaken by volunteers; (b) sponsorship by local entities, either through in-kind goods and services (earth-moving services, technical expertise, conservation easements) or cash contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored resources and to generate a community conservation ethic.

(4) Cost-effectiveness and Budget Justification (15 points)

Proposals will be evaluated on the percentage of funds that will be dedicated to all phases of project implementation including physical, on-the-ground restoration and/or science-based monitoring, compared to the percentage that is for administration, salaries, overhead and travel. Applications proposing to use restoration funds to expand an organization's day-to-day activities are unlikely to obtain a high score under this criterion. To encourage on-the-ground restoration, funding for salaries must be used to support staff directly involved in accomplishing the restoration work. Proposals also will be evaluated on the need for funding and the overall leverage of NOAA funds anticipated, including the amount of cash match; the potential for, or demonstrated NOAA involvement in, the project; the ability to which the proposed project is likely to catalyze future restoration and protection of living marine resources; and the ability of the applicant to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA will expect cost-sharing to leverage funding and to further encourage partnerships among government, industry, and academia.

XIV. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are ''necessary and reasonable.'' Allowable costs are determined by

reference to the OMB Circulars A–122, ''Cost Principles for Non-profit Organizations''; A–21, ''Cost Principles for Education Institutions''; A–87, ''Cost Principles for State, Local and Indian Tribal Governments''; and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 ''Contracts with Commercial Organizations.''

XV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), will be applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

The CRP will determine National Environmental Policy Act compliance on a project by project basis.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: February 6, 2002.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3376 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020602B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and the Reef Fish Advisory Panel (AP).

DATES: The meetings will be held on Tuesday, February 26 through Thursday, February 28, 2002. The Council's Reef Fish AP will convene at 9 a.m. (CST) on Tuesday, February 26, 2002, and conclude by 12 noon on Wednesday, February 27, 2002. The SSC will subsequently convene at 1:30 p.m. on Wednesday, February 27, 2002 and will conclude by 5 p.m. on Thursday, February 28, 2002.

ADDRESSES: The meetings will be held at the New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, the Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and the SSC will review a draft Red Grouper Rebuilding Plan Regulatory Amendment and to provide recommendations to the Council on red grouper regulations. Red grouper were declared to be overfished and undergoing overfishing by the Acting Southeast Regional Administrator for NMFS in October 2000. The Council originally began developing a rebuilding plan as part of Draft Reef Fish Amendment 18, which addressed a number of other reef fish issues. However, due to delays in the development of Amendment 18, the Council chose to separate out the rebuilding plan and proceed with it through a separate regulatory amendment.

The red grouper regulatory amendment contains alternatives for determining the sustainable fishing parameters on which a rebuilding plan is based. These include maximum sustainable yield (MSY), the fishing mortality rate that produces MSY (FMSY), the biomass or biomass proxy that supports MSY (BMSY), the minimum stock size threshold below which a stock is considered to be overfished (MSST), the maximum fishing mortality threshold above which a stock is considered to be undergoing overfishing (MFMT), and optimum yield (OY). The regulatory amendment also contains alternatives for selecting a rebuilding strategy and rebuilding scenarios (combinations of management measures) to achieve rebuilding. In addition to the pre-constructed scenarios, the regulatory amendment contains individual alternatives to adjust the shallow-water grouper quota, implement or adjust closed seasons, implement commercial trip limits, adjust recreational bag limits, move the longline/buoy gear boundary, and change the starting date of the commercial reef fish fishing year.

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 19, 2002.

Dated: February 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3380 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020602C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee and Scallop Oversight Committee in February and March, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on February 28, 2002 and March 4 and 5, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 28, 2002, 10 a.m.—Monkfish Oversight Committee Meeting.

The committee will finalize recommendations to the Council on goals and objectives for Amendment 2 to the Monkfish Fishery Management Plan (FMP) for approval in March. The committee will also begin to outline alternative management strategies to achieve those goals and objectives.

Monday, March 4, 2002, 10 a.m. and Tuesday, March 5, 2002, 9:30 a.m.—Scallop Oversight Committee Meeting.

The Oversight Committee will continue development of management alternatives for Draft Amendment 10 to the Sea Scallop FMP. The committee will evaluate habitat and bycatch technical advice from the joint meeting of the Habitat Technical Team, the Groundfish Plan Development Team (PDT) and the Scallop PDT. Recommendations will be developed for draft alternatives in Scallop FMP Amendment 10 to minimize, to the extent practicable, bycatch and habitat impacts from scallop fishing. Other issues and measures associated with Amendment 10 may also be developed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 7, 2002.

Matteo Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3381 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Disposal of Paper Copies of U.S. Patents Removed From the Examiners' Search Rooms

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is considering whether the paper copies of selected subclasses of U.S. patents to be removed from the examiners' search rooms should be disposed of as wastepaper or donated to a non-profit organization. The USPTO is seeking input on whether any non-profit organization is interested in acquiring the paper copies of the U.S. patents to be removed from the examiners' search rooms.

DATES: Any interested non-profit organization should contact the USPTO on or before March 14, 2002 to indicate a desire to acquire paper copies of U.S. patents. If such interest is expressed, and the USPTO proceeds with donating the paper copies of U.S. patents removed from the examiners' search rooms to a non-profit organization, interested non-profit organizations will then be required to contact the USPTO within thirty days of the date the USPTO's web site is updated to include the subclasses in which the organization is interested.

FOR FURTHER INFORMATION CONTACT: Any interested non-profit organization should contact Richard Seidel by facsimile marked ''ATTN EXAMINERS SEARCH ROOMS'' at (703) 308–7725. Questions concerning this notice may be directed to Richard Seidel by telephone at (703) 306–3431.

SUPPLEMENTARY INFORMATION: The USPTO is in the process of removing paper copies of selected subclasses of U.S. patents from the examiners' search rooms. The National Archives and Records Administration (NARA) has determined that paper copies of U.S. patents in the examiners' search rooms are temporary records that may be destroyed when no longer needed for current USPTO business. Some of the paper copies have already been destroyed. The USPTO is considering whether it should: (1) Dispose of the paper copies of the selected subclasses of U.S. patents removed from the examiners' search rooms as wastepaper; or (2) donate the paper copies of the selected subclasses of U.S. patents removed from the examiners' search rooms to a non-profit organization. Therefore, the USPTO is seeking input on whether any non-profit organization is interested in acquiring the paper copies of U.S. patents to be removed from the examiners' search rooms (the USPTO is not currently aware of any).

Any donation of paper copies of U.S. patents must comply with the NARA regulations for the donation of temporary records which are set out in 36 CFR 1228.60. For example, the donee must be a non-profit organization and must agree not to sell the U.S. patent copies except as wastepaper, the donation must be made without cost to the United States Government, and NARA must provide written approval of the donation. Thus, even if there is interest by a non-profit organization in acquiring the paper copies of U.S. patents removed from the examiners' search rooms, the USPTO may still dispose of them as wastepaper if the USPTO cannot donate them to the non-

profit organization in a cost-effective manner or if the USPTO cannot obtain written approval for the donation by NARA in a timely manner.

Since the USPTO is removing the paper copies of U.S. patents from the examiners' search rooms on a subclass-by-subclass basis, the USPTO is not in a position to accommodate a request by a non-profit organization for a complete set of all U.S. patents or even all U.S. patents in any particular class. The USPTO is only seeking non-profit organizations interested in the selected subclasses for which the paper copies of U.S. patents are being removed from the examiners' search rooms. In addition, as the USPTO will not be conducting a file integrity review of the paper copies of the U.S. patents in a subclass as they are being removed from the examiners' search rooms, the USPTO cannot assure that the paper copies of U.S. patents available for donation are a complete set of U.S. patents even as to the selected subclasses.

If the USPTO proceeds with donating the paper copies of U.S. patents removed from the examiners' search rooms to a non-profit organization, the USPTO will provide a list of the subclasses for which the paper copies of U.S. patents are being removed from the examiners' search rooms on the USPTO's Internet web site (www.uspto.gov). The USPTO will update this list when additional subclasses are removed from the examiners' search rooms.

The USPTO published a notice seeking public input on a proposal to eliminate patent and trademark classified paper files from the public search room. See Notice of Request for Comments on Development of a Plan to Remove the Patent and Trademark Classified Paper Files from the Public Search Room, 66 FR 45012 (Aug. 27, 2001), 1250 *Off. Gaz. Pat. Office* 137 (Sept. 25, 2001). This notice concerns a plan to dispose of paper copies of selected subclasses of U.S. patents removed from the examiners' search rooms and is not related to the development of a plan to eliminate patent and trademark classified paper files from the public search room.

Dated: February 5, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and, Director of the Patent and Trademark Office.

[FR Doc. 02–3276 Filed 2–11–02; 8:45 am]

BILLING CODE 3510–16–P

THE COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 February 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, February 5, 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–3308 Filed 2–11–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China and Amendment of Export Visa and Certification Requirements for Textiles and Textile Products Integrated into GATT 1994 in the First, Second and Third Stage; Correction

February 6, 2002.

In the letter to the Commissioner of Customs published in the Federal Register on December 28, 2001 (66 FR 67229), on page 67230, 1st column, in the table listing import restraint limits, Category 239pt. was inadvertently omitted from the list of categories covered under Group I. The corresponding footnote, reading ''Category 239pt.: only HTS number 6209.20.5040 (diapers),'' was also inadvertently omitted from the list of footnotes on page 67230, 3rd column. A letter has been sent to the Commissioner of Customs to add this category to the categories listed under Group I and to add the corresponding footnote to the list of footnotes.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–3324 Filed 2–12–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Department of the Air Force is deleting six notices and amending one system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on March 14, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 6, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F065 AFAFC K

SYSTEM NAME:

USAF Retired Pay System (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7347b, Defense Military Retiree and Annuity Pay System (April 12, 1999, 64 FR 17629).

F065 AF AFC E

SYSTEM NAME:

Joint Uniform Military Pay System (JUMPS) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7340, Defense Joint Military Pay System-Active Component (April 12, 1999, 64 FR 17629).

F065 AFAFC C

SYSTEM NAME:

Uniformed Services Savings Deposit Program (USSDP) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7280, Uniformed Services Savings Deposit Program (USSDP) (August 30, 2000, 65 FR 52715).

F065 AF AFC D

SYSTEM NAME:

Air Reserve Pay and Allowance System (ARPAS) (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7346, Defense Joint Military Pay System-Reserve Component (April 12, 1999, 64 FR 17629).

F065 AF AFC C

SYSTEM NAME:

Travel Records (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7333, Travel Payment System (August 22, 2000, 65 FR 50973).

F065 AFAFC G

SYSTEM NAME:

Indebtedness and Claims (June 11, 1997, 62 FR 31793).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS), and are being maintained under the DFAS system of records notice T7332, Defense Debt Management System (April 8, 1997, 62 FR 16793).

Amendment

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record (August 21, 2001, 66 FR 43843).

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Disposition is pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration.''

* * * * *

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record.

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Surgeon General, 110 Luke Avenue, Room 400, Bolling Air Force Base, Washington, DC 20332–7050;

Headquarters, Air Force Medical Operations Agency, Family Advocacy Program, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254;

Major Command Surgeons' offices; Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD beneficiaries who are entitled to care at Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of suspected and established cases of family maltreatment, assessments and evaluations, investigative reports, check lists, family advocacy case management team minutes and reports, follow-up and evaluative reports, correspondence, and any other supportive data gathered relevant to individual family advocacy program cases. Records of family member exceptional medical and/or educational needs, medical summaries, individual educational program plans, general supportive documentation and correspondence. Secondary prevention records, assessment and survey instruments, service plans, and chronological data. Prevention contact activity files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 40–301, Air Force Family Advocacy Program, and E.O. 9397 (SSN).

PURPOSE(S):

To document the activities of the Family Advocacy Program as they relate to allegations of and substantiated cases of family maltreatment, exceptional educational and/or medical needs of family members, prevention activities, assessment and survey activities; compile database for statistical analysis, tracking, and reporting; evaluate program effectiveness and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To any member of the family in whose sponsor's name the file is maintained, in furtherance of treating any member of the family.

To the Attorney General of the United States or his authorized representatives in connection with litigation, or other matters under the direct jurisdiction of the Department of Justice.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

To officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies and relating to the coordination of family advocacy programs, medical care and research concerning family maltreatment and neglect and exceptional educational or medical conditions.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

To the Federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or families with exceptional medical or educational needs or when involved in child abuse or neglect.

To authorized surveying bodies for professional certification and accreditations.

To the individual organization or government agency as necessary when required by Federal statute, E.O., or by treaty. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with applicable statutes.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system, except as stipulated in the ''Note'' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, in computers, and on computer output products.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the sponsor or the sponsor's spouse.

SAFEGUARDS:

Records are maintained in various types of lockable filing equipment in monitored or controlled access lockable rooms or areas. Records are accessible only to authorized personnel that are properly screened and trained. Computer terminals are located in supervised areas with access controlled by password or other user-code systems. Records on computer storage devices are protected by computer system security software or physically stored in lockable filing equipment.

RETENTION AND DISPOSAL:

Disposition is pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Division Chief, Air Force Medical Operations Agency, Family Advocacy Division, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254, Major Command Surgeons, and Commanders of Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains information on them should address inquiries to the Family Advocacy Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices

Requests should include the name and Social Security Number of the individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking to access their records in this system should address requests to the Patient Affairs Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests should include the name and Social Security Number of the individual concerned.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, reports from physicians and other medical department personnel; reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. 02–3321 Filed 2–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 14, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 5, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,052.

Burden Hours: 4,224.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–3285 Filed 2–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–18: Energy Biosciences

AGENCY: Department of Energy (DOE)

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Science (SC), U.S. Department of Energy (DOE) invites applications from potential applicants for research funding in the Energy Biosciences program area. The Energy Biosciences program has the mission of generating knowledge about plants and non-medical microorganisms that provides scientific foundations for future energy related biotechnologies.

DATES: For timely consideration, all preapplications should be received by February 27, 2002. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated to the applicant by April 12, 2002. The deadline for receipt of formal applications is June 13, 2002.

ADDRESSES: Preapplications referencing Program Notice 02–18, should be sent by electronic mail to: energy.biosciences@science.doe.gov. Attn: Program Notice 02–18.

Formal applications, referencing Program Notice 02–18, must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–18. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Chemical Sciences, Geosciences and Biosciences Division, Office of Basic Energy Sciences, SC–143, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873; E-mail to: pat.snyder@science.doe.gov.

SUPPLEMENTARY INFORMATION: Potential applicants should submit a brief preapplication that consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The principal purpose in using preapplications is to reduce the expenditure of time and effort on the part of the applicant.

The Energy Biosciences program has the mission of generating knowledge about plants and non-medical microorganisms that provides scientific foundations for future energy related biotechnologies. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic and hormonal regulation, metabolic diversity, ion uptake, transport and accumulation; genetic transmission and expression; plant-microbial interactions; plant cell wall structure and function; lignocellulose degradative mechanisms; anaerobic metabolism, energetics and membrane phenomena; microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The program also encourages fundamental biological research that interfaces with traditional disciplines in the physical and earth sciences. The objective is to discern and understand basic mechanisms and principles.

Program Funding

It is anticipated that approximately $2,000,000 will be available for grant awards during FY 2003, contingent upon the availability of appropriated funds. Multiple year funding of grant

awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preapplication should consist of a two to three page concept paper that focuses on the scientific objectives and basic research approaches planned. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives us the opportunity to advise potential applicants on the suitability of the scope of the research proposed to the mission of the DOE Energy Biosciences program. A response indicating the appropriateness of submitting a formal application will be sent from the Energy Biosciences program office in time to allow for an adequate preparation period for a formal application.

When a formal application is made, it must be 10 pages or less, exclusive of figure illustrations, and include the hypotheses being tested and the proposed experimental design. Additional pages must include a one-page abstract or summary of the proposed research, curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Merit Review

Applications will be subjected to a scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the 10 CFR part 605 and the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Guide is possible via the Internet using the following Web Site address: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on February 4, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–3336 Filed 2–11–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–5–002]

Algonquin Gas Transmission Company; Notice of Amendment

February 6, 2002.

Take notice that on January 23, 2002, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP01–5–002, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Algonquin on December 21, 2001, in Docket Nos. CP01–5–000 (the HubLine Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Specifically, Algonquin seeks authorization to: (1) Modify the diameter of the 29.4 mile pipeline from 24 inches to 30 inches; (2) modify the diameter of the Deer Island Lateral from 16 inches to 24 inches; and (3) make minor modifications to two meter stations in order to accommodate the increased pipe diameters. Algonquin states that the incremental cost of modifying the HubLine Project facilities is estimated to be $19.6 million. Algonquin does not propose to amend the approved recourse rate to reflect the cost increase, but asserts that it will be at risk for the additional costs.

Algonquin states that these modifications will not increase the firm capacity made available by the HubLine Project (authorized in Docket No. CP01–5–000) due to existing constraints on its system. However, Algonquin notes that the proposed modifications will allow for future expansion of its system to meet growing demand with fewer environmental impacts.

Any questions regarding the application should be directed to Steven E. Tillman, Director of Regulatory Affairs, Algonquin Gas Transmission Company, P.O. Box 1642, Houston, Texas 77251–1642 at 713–627–5113.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission.

Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3327 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–316–005]

ISO New England, Inc.; Notice of Filing

February 6, 2002.

Take notice that on January 25, 2002, ISO New England Inc. (the ISO) hereby submitts its ''Index of Customers'' for the fourth quarter of 2001. Under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services the index of Customers lists all entities, both participatns in the New England Power Pool (NEPOOL) and Non-Participant customers unde the NEPOOL Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: February 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–3328 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–4–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment

February 6, 2002.

Take notice that on January 23, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP01–4–001, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Maritimes on December 21, 2001, in Docket Nos. CP01–4–000 (the Phase III Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Specifically, Maritimes proposes to increase the diameter of a one-mile segment of pipeline at the Beverly, Massachusetts terminus of its Phase III Project from a 24-inch diameter pipe to a 30-inch diameter pipe. Maritimes will also perform minor modifications at its Salem Metering Station to reflect a single 30-inch diameter pipeline for the entire Phase III Project, including the elimination of a 24-inch pig launcher and a 30-inch receiver that will no longer be necessary. Maritimes estimates that the cost of modifying the one mile of Phase III Project pipeline will increase the cost of the project by approximately $3.5 million. Maritimes acknowledges that it will have the burden of proof in any future rate case if it seeks to roll these additional costs into its system-wide rates. Maritimes asserts that the need for the amended authorization is dependent upon Algonquin Gas Transmission Company's related filing in Docket No. CP01–5–002 to increase its HubLine Project pipeline to 30-inch diameter line.

Any questions regarding the application should be directed to Joseph F. McHugh, Director, Regulatory Affairs, M&N Management Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135 at 617–560–1518.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before February 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3326 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11674–004, 11681–004, 11686–004, 11718–004 11720–004, 11780–004, 11819–004, 11825–004]

Universal Electric Power Corporation; Notice of Surrender of Preliminary Permits

February 6, 2002.

Take notice that Universal Electric Power Corporation, permittee for the projects listed below, has requested to surrender the preliminary permits because the proposed projects no longer meet its investment criteria.

Project No.	Project name	Stream	State	Expiration date
11674–004	Berlin Dam	Mahoning River	OH	05–31–2002
11681–004	Whitney Point Dam	Otselic River	NY	06–30–2002
11686–004	Mosquito Creek Dam	Mosquito Creek	OH	05–31–2002
11718–004	Patoka Lake Dam	Patoka River	IA	07–31–2002
11720–004	Cecil M. Hardin Dam	Raccoon River	IA	03–31–2002
11780–004	Pleasant Hill Dam	Mohican River	OH	09–30–2002
11819–004	Chouteau Lock & Dam	Verdigris River	OK	08–31–2002
11825–004	Newt Graham Lock & Dam	Verdigris River	OK	02–28–2003

The permittee filed the request on December 31, 2001, and the eight preliminary permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3331 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–79–000, et al.]

PG&E Dispersed Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 5, 2002.

Take notice that the following filings have been made with the Commission.

Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Generating Company, LLC

[Docket No. EG02–79–000]

Take notice that on January 31, 2002, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen), a Delaware limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

PG&E Dispersed Gen previously has been determined to be an EWG. This filing is occasioned by PG&E Dispersed Gen's acquisition of interests in two additional eligible facilities, and to notify the Commission that certain other eligible facilities are no longer operational. All output from its facilities will be sold exclusively at wholesale within the meaning of Section 32 of PUHCA.

Comment Date: February 26, 2002.

2. B.L. England Power LLC

[Docket No. EG02–80–000]

Take notice that on February 1, 2002, B.L. England Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant states that it is a limited liability company organized under the laws of the State of Delaware that is acquiring the B.L. England Station (Facilities) in Beesley's Point, New Jersey. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, Virginia, and New Jersey.

Comment Date: February 26, 2002.

3. Deepwater Power LLC

[Docket No. EG02–81–000]

Take notice that on February 1, 2002, Deepwater Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant states that it is a limited liability company organized under the laws of the State of Delaware that is acquiring the Deepwater Station in Pennsville, New Jersey (Facilities) and selling electric energy at wholesale. The total capacity of the operating units of the Facilities is 239 MW. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, Virginia, and New Jersey.

Comment Date: February 26, 2002.

4. Otter Tail Power Company

[Docket No. ER02–912–000]

Take notice that on January 31, 2002, Otter Tail Power Company submitted a Control Area Services and Operations Tariff and requested termination of its Open Access Transmission Tariff. The Control Area Services and Operations Tariff and the termination of the Open Access Transmission Tariff are proposed in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

5. Michigan Electric Transmission Company

[Docket No. ER02–914–000]

Take notice that on January 31, 2002, Michigan Electric Transmission Company (METC) tendered for filing a revised Service Agreement with Wolverine Power Supply Cooperative, Inc. (Customer) to continue arrangements regarding the use of Plains Road Substation facilities for the provision of Network Integration Transmission Service (designated Second Revised Service Agreement No. 8 under METC FERC Electric Tariff No. 1). The revised Service Agreement reflects the terms of a January 30, 2002 letter agreement to the Service Agreement which, among other things, lowers the Facilities Usage Fees from $888 to $635 per month and from $0.20/kW/month to $0.18/kW/month. METC requests a January 1, 2002 effective date.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment Date: February 21, 2002.

6. The Detroit Edison Company

[Docket No. ER02–915–000]

Take notice that on January 31, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing amended and restated electric supply agreements for wholesale power sales transactions under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff, Original Vol. No. 4 (the WPS–1 Tariff) between Detroit Edison and the City Croswell, Michigan; Detroit Edison and the Village of Sebewaing, Michigan; and Detroit Edison and Thumb Electric Cooperative.

Comment Date: February 21, 2002.

7. Otter Tail Power Company

[Docket No. ER02–916–000]

Take notice that on January 31, 2002, Otter Tail Power Company filed a proposal to cancel parts of its Open Access Transmission Tariff, substitute an Ancillary Services Form of Agreement, and to submit an Ancillary Services Agreement. Otter Tail Power Company filed this proposal in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–918–000]

Take notice that on January 30, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by Central Illinois Light Company (CILCO).

Copies of this filing were sent to all applicable customers under the CILCO Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–919–000]

Take notice that on January 31, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by Indianapolis Power & Light Company (IPL).

Copies of this filing were sent to all applicable customers under the IPL Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 21, 2002.

10. Michigan Electric Transmission Company

[Docket No. ER02–923–000]

Take notice that on January 31, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed revised Service Agreement for Network and Firm and Non-Firm Point to Point and Network Transmission Service with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of September 1, 2001. Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, Consumers and the Customer.

Comment Date: February 21, 2002.

11. Michigan Electric Transmission Company

[Docket No. ER02–924–000]

Take notice that on January 31, 2002 Michigan Electric Transmission Company, (METC) filed unexecuted Service Agreements for Network Integration Transmission and Network Operating Agreements (Agreements) with the Cities of Bay City, Eaton Rapids, Hart, Portland and St. Louis and the Village of Chelsea, (jointly, Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Agreements being filed are Service Agreement Nos. 138 through 143 under that tariff. Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements. Copies of the filed Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: February 21, 2002.

12. Southern California Edison Company

[Docket No. ER02–925–000]

Take notice that on January 31, 2002, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6. SCE proposes to revise its TO Tariff to reflect: (1) An increase in the Base transmission rate levels applicable to wholesale and retail service consistent with the increase in the Base Transmission Revenue Requirements; (2) a reduction to the Transmission Revenue Balancing Account Adjustment (TRBAA); and (3) changes to certain terms and conditions of the TO Tariff Tariff necessitated by the proposed transmission rate changes. The proposed changes would increase revenues from TO Tariff transmission customers by $44.7 million based on the 12 month period ending December 31, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation (ISO), the California Electricity Oversight Board, and all ISO-certified Scheduling Coordinators.

Comment Date: February 21, 2002.

13. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. ER02–926–000]

Take notice that on January 28, 2002, Western Resources, Inc. (d.b.a. Westar Energy), on its behalf and on the behalf of its wholly-owned subsidiary Kansas Gas and Electric Company (KGE) (d.b.a. Westar Energy), submitted for filing a notice of cancellation regarding its Peaking Capacity Sales Agreements with Kansas City Power & Light Company (KCPL).

Western Resources requests an effective date of January 28, 2002. Copies of the filing were served upon KCPL, the Kansas Corporation Commission and the Missouri Public Service Commission..

Comment Date: February 19, 2002.

14. LTV Steel Mining Company

[Docket No. ER02–927–000]

Take notice that on January 28, 2002, LTV Steel Mining Company filed with the Federal Energy Regulatory Commission (Commission) a Revised Agreement for Temporary Interconnection and Transmission Service under which it proposes to continue to provide temporary interconnection and transmission service to Rainy River Energy Corporation—Taconite Harbor over its transmission facilities.

Comment Date: February 19, 2002.

15. Ameren Services Company

[Docket No. ER02–928–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Fredericktown, Missouri (Fredericktown). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Fredericktown pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

16. Ameren Services Company

[Docket No. ER02–929–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Citizens Electric Corporation (Citizens). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Citizens pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

17. Ameren Services Company

[Docket No. ER02–930–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Farmington, Missouri (Farmington). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Farmington pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

18. Ameren Services Company

[Docket No. ER02–930–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Farmington, Missouri (Farmington). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Farmington pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

19. Ameren Services Company

[Docket No. ER02–931–000]

Take notice that on January 30, 2002, Ameren Services Company (Ameren Services) tendered for filing an

unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Owensville, Missouri (Owensville). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Owensville pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2002.

20. Virginia Electric and Power Company

[Docket No. ER02–932–000]

Take notice that on January 31, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a redacted, non-confidential Wholesale Power Supply Agreement (Agreement) labeled ''Proprietary Commercial Information Redacted'' by Virginia Electric and Power Company to The United Illuminating Company, designated as Service Agreement Number 204, under the Company's FERC Electric Tariff, Third Revised Vol. No. 4. The Company also tendered an unredacted, confidential copy of the Service Agreement labeled ''Contains Proprietary, Commercial Information—Do Not Release'' and identifies the information for which privileged treatment is sought. The Company requests privileged treatment of certain information contained in the Agreement pursuant to section 388.112 of the Commission's regulations, 18 CFR 388.112 (2001).

The Company requests an effective date of January 1, 2002, the date service was first provided to the customer under the Agreement. Copies of the filing were served upon The United Illuminating Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission

Comment Date: February 21, 2002.

21. North American Electric Reliability Council

[Docket No. ER02–933–000]

Take notice that on January 31, 2002, the North American Electric Reliability Council filed a report and a motion for the continuation of its Market Redispatch Program beyond March 1, 2002.

Comment Date: February 21, 2002.

22. Commonwealth Edison Company

[Docket No. ER02–934–000]

Take notice that on January 31, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated unexecuted Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of February 1, 2002, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing was served on Exelon and Ormet.

Comment Date: February 21, 2002.

23. Boston Edison Company

[Docket No. ER02–936–000]

Take notice that on January 31, 2002, Boston Edison Company (Boston Edison) tendered for filing its First Revised Service Agreement No. 67 to Volume No. 8 of its Open Access Transmission Tariff. Service Agreement No. 67 is an executed service agreement between Boston Edison and Entergy Nuclear Generation Company for Network Integration Transmission Service. The purpose of the filing is to correct two typographical errors in the original service agreement. Boston Edison requests waiver of the Commission's regulations to permit an effective date of November 1, 1999 to coincide with the effective date of the original service agreement.

Copies of the filing were served upon the Entergy Nuclear Generation Company and the Massachusetts Department of Telecommunications and Energy.

Comment Date: February 21, 2002.

24. Cobb Electric Membership Corporation

[Docket No. ER02–937–000]

Take notice that on January 31, 2002, Cobb Electric Membership Corporation (Cobb) filed a long-term power sales agreement between Cobb and Pataula Electric Membership Corporation (the Agreement). Confidential treatment is being sought for the Agreement.

Comment Date: February 21, 2002.

25. Central Illinois Light Company

[Docket No. ER02–938–000]

Take notice that on January 31, 2002, Central Illinois Light Co. filed a proposal to cancel parts of its Open Access Transmission Tariff and substitute an Ancillary Services Form of Agreement. Such cancellation and substitution are proposed in order to accommodate the start-up of Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff administration.

Comment Date: February 21, 2002.

26. Southern Company Services, Inc.

[Docket No. ER02–939–000]

Take notice that on January 31, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a department of SCS, as agent for Georgia Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the City of Hampton's Hampton Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Georgia Power Company, to the City of Hampton under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment Date: February 21, 2002.

27. Midwest Independent Transmission System Operator Inc.

[Docket Nos. RT01–87–006 and ER02–108–004]

Take notice that on January 28, 2002, Midwest Independent Transmission System Operator Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's Order issued in the above-referenced proceedings, 97 FERC ¶ 61,326 (2001), and revisions to the Midwest ISO Open Access Transmission Tariff , FERC Electric Tariff, First Revised Volume No. 1, and the Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (Midwest ISO Agreement), First Revised Rate Schedule FERC No. 1.

The Midwest ISO seeks an effective date of February 1, 2002.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385–2010 (2001), with respect to service on all parties on the official service list in these proceedings. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestios.org* under the heading ''Filings to FERC'' for

other interested parties in this matter. The Midwest ISO will provide hard copies to interested parties upon request.

Comment Date: February 19, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

Maglaie R. Salas,

Secretary.

[FR Doc. 02–3292 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2002.

a. *Application Type:* Application to Amend License for the Eagle & Phenix Mills Project.

b. *Project No:* 2655–041.

c. *Date Filed:* January 14, 2002.

d. *Applicant:* Eagle & Phenix Mills Hydro Company, Inc.

e. *Name of Project:* Eagle & Phenix Project.

f. *Location:* The project is located on the Chattahoochee River in Columbus, Georgia, and Phenix City, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Beth Harris, Eagle & Phenix Hydro Company, Inc., P.O. Box 8597, 1311 A Miller Road, Greenville, SC 29604. Tel: (864) 281–9634.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.gov.

j. *Deadline for filing comments and/or motions:* (March 14, 2002).

Please include the project number (2655–041) on any comments or motions filed.

k. *Description of Filing:* The licensee requests to amend the license to reduce the project's authorized capacity from 28.66 MW to the existing capacity of 4.26 MW, and adjust the project's annual charges accordingly.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3329 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7856–025.

c. *Date Filed:* December 21, 2001.

d. *Applicant:* Willow Creek Hydro, LLC (Transferee).

e. *Name of Project:* Potosi.

f. *Location:* On South Willow and Potosi Creeks near Pony, in Madison County, Montana. The project would affect lands of the Beaverhead National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Curry, 110 Sunrise Drive, Dillon, Montana 59725, (406) 683–3326.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* March 14, 2002.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2008(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Please include the project number (P–7856–025) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. Description of Transfer: Potosi Generating Station, Inc. (Transferor) was dissolved in December 1998 and no longer exists. Willow Creek Hydro, LLC seeks Commission approval to transfer the license for the Potosi Project from Potosi Generating Station, Inc. to Willow Creek Hydro, LLC.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3330 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000 et al.]

Notice of Technical Conference

February 5, 2002.

In the matter of: RT01–2–001, RT01–2–002, RT01–2–003, RT01–10–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–86–001, RT01–86–002, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–95–001, RT01–95–002, RT01–98–000, RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–100–000, RT02–1–000, EL02–9–000; RT01–2–001, RT01–2–002, RT01–2–003, RT01–10–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–86–001, RT01–86–002, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–95–001, RT01–05–002, RT01–98–000, RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–100–000, RT02–1–000, RT02–9–000; PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc., Allegheny Power, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Southwest Power Pool, Inc., Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC, Entergy Services, Inc., Southern Company Services, Inc., California Independent System Operator Corporation, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc., Midwest Independent System Operator, Alliance Companies, NSTAR Services Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C., Regional Transmission Organizations, Regional Transmission Organizations, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc., Allegheny Power, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Southwest Power Pool, Inc., Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC, Entergy Services, Inc., Southern Company Services, Inc., California Independent System Operator Corporation, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc., Midwest Independent System Operator, Alliance Companies, NSTAR Services Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C., Regional Transmission Organizations, Regional Transmission Organizations, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico,

Tucson Electric Power Company, WestConnect RTO, LLC.

Take notice that a technical conference will be held on February 19, 2002, to discuss the allocation of regional transmission organization (RTO) characteristics and functions between separate organizations within an RTO region.[1] Participants also may address the allocation of responsibility for performing other wholesale market functions (e.g. administration of a balancing market and security coordination) at the conference.[2] Members of the Commission may attend and participate in the discussions. All interested persons may attend.

The conference will be held from approximately 9:00 a.m. to 5:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, in the Commission Meeting Room on the second floor. The Commission is inviting selected panelists on these topics to participate in this conference; it is not at this time entertaining requests to make presentations. There will be an opportunity for non-panelists to submit comments in the above dockets.

The Capitol Connection broadcasts all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about the Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit www.capitolconnection.gmu.edu. The Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

Those interested in obtaining transcripts of the conference will need to contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646.

Further details about the agenda and organization of the conference, the panelists and submission of comments will be specified in a subsequent notice. Other questions about the conference program should be directed to: Diane Bernier, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street, NE, Washington, DC 20426, (202) 219–2886.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3334 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The RTO characteristics are: (1) Independence; (2) scope and regional configuration; (3) operational authority; and (4) short-term reliability. RTO functions include: (1) tariff administration and design; (2) congestion management; (3) parallel path flow; (4) ancillary services; (5) OASIS, total transmission capacity and available transmission capacity; (6) market monitoring; (7) planning and expansion; and (8) interregional coordination. *See* Regional Transmission Organizations, Order No. 2000, FERC Stats. And Regs. 31,089 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. And Regs. 31,092 (2000), *aff'd,* Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[2] *See* Order Providing Guidance on Continued Processing of RTO Filings, 97 FERC ¶ 61,146 at 61,633 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–000]

Southern Natural Gas Company; Notice of Site Visit

February 6, 2002.

On February 11, 12, 13, and 14, 2002, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification site visit of Southern Natural Gas Company's (Southern) South System Expansion II Project in St. Tammany Parish, Louisiana; Clarke, Lauderdale, and Jefferson David Counties, Mississippi; Sumter, Marengo, Hale, Perry, Autauga, Elmore, Tallapoosa, and Lee Counties, Alabama; and Harris, Talbot, Monroe, Bibb, Jones, Baldwin, Washington, Jefferson, Richmond, Upson, Effingham, and Chatham Counties, Georgia. The project area will be inspected by automobile and on foot, as appropriate. Representatives of Southern will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For additional information, contact the Commission's Office of External Affairs at (202) 208–1088.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3325 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–000 and RP01–253–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

February 6, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 am on Wednesday, February 13, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3332 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 6, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary. In addition, on November 9, 2001, the Commission issued an Order, 97 FERC ¶ 61,182, Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, wherein the Commission declared that it would treat, as exempt, State-Federal regional panel discussions between the Commission staff and state agencies which are parties to certain proceedings listed below. The order requires that the meetings of the panels be transcribed and placed in the decisional record. The order reiterated the standard requirement that the OSEC publish notice of the exempt communications and noted that the parties then have an opportunity to

respond to such communications. See 18 CFR 385.2201(g).

On November 27, 2001, the State-Federal Midwest Panel discussion was held. On January 9, 2002, the State-Federal Northeast Panel discussion was held. Transcripts were prepared during both discussions and placed in the decisional record. Copies of these transcripts are on file with the Commission and are available for public inspections. The documents my be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). The affected docket numbers are RT02–2–000, RT01–1–000, RT01–2–003, RT01–10–000, RT01–13–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–44–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–82–000, RT01–83–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–89–000, RT01–90–000, RT01–92–000, RT01–93–000, RT01–94–000, RT01–95–000, RT01–96–000, RT01–98–000, RM99–2–000, ER99–3144–000, EC99–80–000, RT01–99–000, RT01–100–000, RT02–1–000, EL01–80–000, RT01–37–000, RT01–84–000, RT01–26–000, ER01–123–000, ER01–2995–000, ER01–2993–000, ER01–2999–000, ER01–2997–000, ER01–2992–000, ER01–3000–000, RT01–101–000, EC01–146–000, ER00–3295–000, EC01–137–000, EL01–116–000, ER02–108–000, RM98–1–002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3333 Filed 2–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–4]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at EPA (202) 260–4901, or email at *auby.susan@mail.epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1663.03; Information Collection Request Update for the Compliance Assurance Monitoring Program; in 40 CFR part 64; was approved 11/27/2001; OMB No. 2060–0376; expires 11/30/2004.

EPA ICR No. 1487.07 Cooperative Agreements and Superfund State Contracts for Superfund Response Action; in 40 CFR part 35, subpart 0; was approved 11/26/2001; OMB No. 2050–0179; expires 11/30/2004.

EPA ICR No. 1730.03; Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators; in 40 CFR part 60, subpart Ec; was approved 11/23/2001; OMB No. 2060–0363; expires 11/30/2004.

EPA ICR No. 1051.08; New Source Performance Standards for Portland Cement Plants; in 40 CFR part 60, subpart F; was approved 11/23/2001; OMB No. 2060–0025; expires 11/30/2004.

EPA ICR No. 1062.07; NSPS for Coal Preparation Plants; in 40 CFR part 60, subpart Y; was approved 11/23/2001; OMB No. 2060–0122; expires 11/30/2002.

EPA ICR No. 0661.06; NSPS for Asphalt Processing and Asphalt Roofing Manufacture, Reporting and Recordkeeping Requirements; in 40 CFR part 60, subpart UU; was approved 11/23/2001; OMB No. 2060–0002; expires 11/30/2004.

EPA ICR. No. 1011.05; Partial updating of TSCA Inventory Data Base, Production 40 CFR part 710; was approved 11/26/2001; OMB No. 2070–0070; expires 11/30/2004.

EPA ICR No. 0596.07; Application and Summary Report for Emergency Exemption for Pesticides; in 40 CFR part 166; was approved 11/26/2001; OMB No. 2070–0032; expires 11/30/2004.

EPA ICR No. 1189.09; Identification Listing and Rulemaking Petitions; in 40 CFR parts 260, 261; was approved 11/19/2001; OMB No. 2050–0053; expires 11/30/2004.

EPA ICR No. 1597.04; Reporting and Recording Requirements for the Universal Waste Handlers and Destination Facilities, in 40 CFR part 273; was approved 11/19/2001; OMB No. 2050–0145; expires 11/30/2004.

EPA ICR No. 1445.05; Continuous Release Reporting Regulations (CRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), was approved 11/19/2001; OMB No. 2050–0086; expires 11/30/2004.

EPA ICR No. 1823.02; PFC Emission Reduction Partnership for the Semiconductor Industry, Non rule Related, Memo of Understanding; was approved 11/19/2001; OMB No. 2060–0382; expires 11/30/2004.

EPA ICR No. 0186.09; NESHAP for Vinyl Chloride; in 40 CFR part 61, subpart F; was approved 11/19/2001; OMB No. 2060–0071; expires 11/30/2004.

EPA ICR No. 1702.03; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; in 40 CFR part 85; was approved 11/19/2001; OMB No. 2060–0302; expires 11/30/2004.

EPA ICR No. 1657.04; NESHAP for Total HAP Emissions from the Pulp Paper Production Source Category—Process Operations; in 40 CFR part 63, subpart S; was approved 11/19/2001; OMB No. 2060–0387; expires 11/30/2004.

EPA ICR No. 1973.02; Cooling Water Intake Structures New Facility Final Rule; in 40 CFR parts 122.2 and 122.9 (b), (1), (2), (4), and 40 CFR part 125.83; was approved 11/08/2001; OMB No. 2040–0241; expires 11/30/2004.

EPA ICR No. 1125.03; National Emission Standards for Hazardous Air Pollutants for Beryllium Rocket Motor Firing; in 40 CFR part 61, subpart D; was approved 11/08/2001; OMB No. 2060–0394; expires 11/30/2004.

EPA ICR No. 1686.04; NESHAP for the Secondary Lead Smelter Industry; in 40 CFR part 63, subpart X; was approved 11/08/2001; OMB No. 2060–0296; expires 10/31/2004.

EPA ICR No. 1153.07; NESHAP for Equipment Leaks (Fugitive Emission Sources); in 40 CFR part 61, subpart V; was approved 11/08/2001; OMB No. 2060–0068; expires 10/31/2003.

EPA ICR No. 1904.01; Sun Wise School Program; was approved 11/02/2001; OMB No. 2060–0439; expires 11/30/2003.

EPA ICR No. 1896.01; Disinfectant/Disinfection Byproducts, Chemical, and Radionuclides Rules; in 40 CFR part 141 subpart B; was approved 11/29/2001; OMB No. 2040–0204; expires 11/30/2004.

EPA ICR No. 1230.10; Prevention of Significant Deterioration and Nonattainment Area; in 40 CFR part 51

and 52; was approved 10/29/2001; OMB No. 2060–0303; expires 10/31/2004.

EPA ICR No. 1639.04; National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance; in 40 CFR part 136; was approved 11/27/2001; OMB Number 2040–0180; expires 11/30/2004.

EPA ICR No. 1895.02; Microbial Rules; in 40 CFR part 141 subpart B, and part 142 was approved 11/28/2001; OMB No. 2040–0205; expires 11/30/2004.

EPA ICR No. 2038.01; 2000 Aquatic Animal Production Industry Surveys; in 40 CFR part 451; was approved 11/28/2001; OMB No. 2040–0240; expires 11/30/2004.

EPA ICR No. 0270.40; Public Water System Supervision Program; in 40 CFR parts 141 & 142; was approved 11/28/2001; OMB No. 2040–0090; expires 11/30/2004.

EPA ICR No. 1994.02; Baseline Standards and Best Management Practices for the Coal Mining Point Source Category—Coal Mining Subcategory and Western Alkaline; in 40 CFR Part 434; was approved 11/30/2001; OMB No. 2040–0239; expires 11/30/2004.

EPA ICR No. 1488.05; Superfund Site Evaluation and Hazard Ranking System; was approved 11/26/01; OMB No. 2050–0095; expires 11/30/2004.

EPA ICR No. 1391.06; CWA State Revolving Fund Program; was approved 11/28/2001; OMB No. 2040–0118; expires 11/30/2004.

OMB Withdrawals

EPA ICR No. 1861.02; Energy Star Labeling Program Evaluation; on 10/29/2001 was withdrawn from OMB review.

EPA ICR No. 1503.04; Data Acquisition for Registration; on 11/06/2001 was withdrawn from OMB review.

EPA ICR No. 2031.01; Request for Applications for Critical Use Exemptions from the Phaseout of Methyl Bromide; on 11/26/2001 was withdrawn from OMB review.

EPA ICR No. 0619.09; Modification to Mobile Source Emission Factor Survey; on 11/05/2001 was withdrawn from OMB review.

EPA ICR No. 1965.01; Soil Ingestion Research; on 11/02/2001 was withdrawn from OMB review.

Correction to Previously Published Notice

Vol. 66, No. 241/Friday, December 14, 2001, page 64817

40 CFR number incorrectly reported (40 CFR part 61). Should read as follows:

EPA ICR No. 1446.07; PCB's Consolidated Reporting and Recordkeeping Requirements; in 40 CFR part 761; was approved on 08/29/2001; OMB No. 2070–0112; expires 08/31/2004.

Dated: January 31, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–3360 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards for Municipal Waste Combustors Subpart Ea and Subpart Eb, OMB 2060–0210, expires March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 14, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1506.09 and OMB Control No. 2060–0210, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1506.09. For technical questions about the ICR contact Jonathan Binder at (202) 564–2516 or *binder.jonathan@epa.gov* with the Office of Compliance.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Municipal Waste Combustors Subpart Ea and Subpart Eb, OMB 2060–0210; EPA ICR No. 1506.09; expiring March 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Owners or operators of the affected facilities described must make one-time-only notifications and reports and must keep records as required of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS Subpart Ea and Subpart Eb provide information on the operation of the emissions control devices and compliance with the Municipal Waste Combustor (MWC) organics, MWC metals, MWC acid gases, good combustion practices, and nitrogen oxides. Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to Subpart Eb are required to keep records of the weekly amount of carbon used for carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for mercury. Quarterly reports of excess emissions are required under Subpart Ea, while semi-annual reports of excess emissions are required under Subpart Eb. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

MWCs subject to Subpart Ea maintain a file of these measurements, and retain the file for at least 2 years. For MWCs subject to Subpart Eb all records are required to be maintained at the source for a period of 5 years. All reports are sent to the delegated State, Tribal, or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The

information generated by monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment and achieve continuous compliance with the regulation. The collection of this information is mandatory. 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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001, (66 FR 54514). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 238 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of municipal waste combustors.

Estimated Number of Respondents: 8.

Frequency of Response: One-time, quarterly, semi-annual and annual.

Estimated Total Annual Hour Burden: 11,885 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $132,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1506.09 and OMB Control No. 2060–0210 in any correspondence.

Dated: January 31, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–3359 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7142–8]

RIN 2060–AI52

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of categories of major and area sources.

SUMMARY: This notice publishes revisions to the list of categories of major and area sources of hazardous air pollutants (HAP) emissions. The source category list, which is required under section 112(c) of the Clean Air Act (CAA), constitutes a significant part of EPA's agenda for regulating stationary sources of air toxics emissions. The list was most recently published in the **Federal Register** on January 30, 2001.

This notice meets the requirement in section 112(c)(1) to publish periodically, but at least once every 8 years, a list of all categories of sources reflecting revisions since the initial list was published. Several of the revisions identified in this notice have previously been published in actions associated with proposing and promulgating emission standards for individual source categories, and public comments have been requested in the context of those actions. Some of the revisions in this notice have not been reflected in any previous notices and are being made on the Administrator's own motion, without public comment. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions. This notice does not include any revisions to the schedule for standards provided for by CAA section 112(e).

EFFECTIVE DATE: February 12, 2002.

ADDRESSES: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Noell, U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), Organic Chemicals Group (C504–4), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, facsimile number (919) 541–3470, electronic mail address *noell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket for this action is A–90–49. The docket is an organized file of all the information submitted to or otherwise relied upon by the Agency in the development of this revised list of source categories. The principal purpose of the docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the source category list. The docket is available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *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.

I. What Is the History of the Source Category List?

The CAA requires, under section 112, that EPA list all categories of major sources emitting HAP and such categories of area sources warranting regulation and promulgate national emission standards for hazardous air pollutants (NESHAP) to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in section 112(c), on July 16, 1992 (57 FR 31576), we published a list of 174 categories of major and area sources—referred to as the initial list—for which we would develop emission standards. On December 3, 1993 (58 FR 63941), pursuant to requirements in section 112(e), we published a schedule for the promulgation of emission standards for each of the 174 initially listed source categories.

When we publish notices that affect actions relating to individual source categories, it is important to reflect the resultant changes on the list and schedule. However, we published two separate notices where we listed sources for specific pollutants under section 112(c)(6) on April 10, 1998 (63 FR 17838), and additional area sources under section 112(k) on July 19, 1999 (64 FR 38706). Please refer to these specific notices for those listings. Since we have already listed those sources in previous **Federal Register** notices, we are not relisting them in this notice at this time. On June 4, 1996 (61 FR 28197), we published a notice that referenced all previous list and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. Subsequently, we published four additional notices which updated the list and schedule: February 12, 1998 (63 FR 7155); May 17, 1999 (64 FR 26743); November 18, 1999 (64 FR 63025); and January 30, 2001 (66 FR 8220). You should read the previous notices for information relating to the development of the initial list and schedule and subsequent changes.

II. Why Is EPA Issuing This Notice?

This notice announces all list changes that have occurred since we last updated the list on January 30, 2001 (66 FR 8220). The changes and the affected source categories, are:

Changes to Source Category Names
- Friction Materials Manufacturing

Addition of Source Categories
- Coal- and Oil-Fired Electric Utility Steam Generating Units
- Wet-Formed Fiberglass Mat Production

Deletion of Source Categories
- Asphalt Concrete Manufacturing
- Uranium Hexafluoride
- Sewage Sludge Incineration

Subsumptions of Source Categories
- Cellulose Ethers Production
- Miscellaneous Viscose Processes

Changes to the Scope of a Source Category
- Process Heaters

The source category list and promulgation schedule, updated to include today's changes to the list as well as actions from previous notices, are presented in Table 1. Table 1 also includes **Federal Register** citations for notices related to the source categories (Table 1 omits proposal notices once a rule or rule amendment has been promulgated). Source categories for which revisions have been made in today's notice are annotated in Table 1 for ease in discerning where revisions have been made.

For general descriptions of source categories listed in Table 1, please refer to ''Documentation for Developing the Initial Source Category List'' (EPA–450/3–91–030) and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197, June 4, 1996). For subsequent changes to descriptions of source categories for which a rule has been promulgated, please consult Table 1 for the citation of the **Federal Register** notice that includes the amended definition and corresponding rule applicability.

III. What Are the Revisions EPA Is Making to the Source Category List?

The following sections describe revisions to the source category list since January 30, 2001.

A. Changes to Source Category Names

We are renaming the Friction Products Manufacturing source category to Friction Materials Manufacturing so that the name better describes the source category.

B. Addition of Source Categories

Section 112(n)(1)(A) of the CAA requires the Administrator to determine whether regulation of HAP from electric utility steam generating units is appropriate and necessary. This finding was to be made after the consideration of the results of the study mandated by the same section, reported to Congress in EPA's February 1998 ''Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress.'' The EPA gathered additional information and announced on December 20, 2000 (65 FR 79825) that regulation of HAP emissions from coal- and oil-fired electric utility steam generating units was appropriate and necessary. As a result of this determination, the source category for Coal- and Oil-Fired Electric Utility Steam Generating Units was added to the list of source categories under section 112(c) of the CAA in that December 20, 2000 notice. In today's notice, we are simply updating the source category list to reflect that addition.

Today's notice also updates the source category list to reflect the addition of a new source category called Wet-Formed Fiberglass Mat Production. For further information, you should refer to the proposed preamble for the NESHAP for Wet-Formed Fiberglass Mat Production (65 FR 34277), which serves as the official action for adding that source category.

C. Deletion of Source Categories

The Administrator may, where appropriate, delete categories of sources on the Administrator's own motion or on petition. In today's notice, we are deleting the Asphalt Concrete Manufacturing, Uranium Hexafluoride Production, and Sewage Sludge Incineration source categories on the Administrator's own motion. As discussed in the initial list notice (57 FR 31576), we included these categories on the list because at the time, we believed there were major sources in each category, either because they were major sources in their own right or because of collocation with other sources of HAP. These source categories are being deleted because available data indicate that there are no major sources in any of the source categories.

1. Asphalt Concrete Manufacturing

In today's notice, we are deleting the source category Asphalt Concrete Manufacturing because available data indicate that there are no major sources. This source category was initially listed in July 1992 because at the time, we believed there were major sources in the category. Emissions data, along with emission factors, were used to estimate HAP emissions from eleven asphalt concrete manufacturing plants employing various production processes and different fuels. Emissions of total HAP at individual plants range from 1.5 tons per year (tpy) to 6.4 tpy. In addition, emission factors were used to estimate HAP emissions from a plant with a high annual production of 1.2 million tons of asphalt concrete. We estimate total HAP emissions from that plant to be 6.2 tpy. Based on the above information, we have concluded that no asphalt concrete manufacturing facility has the potential to emit HAP approaching major source levels.

2. Uranium Hexafluoride Production

The Uranium Hexafluoride Production source category was initially listed in July 1992. Information collected since the listing indicates that there is only one facility producing uranium hexafluoride in the United States. We visited the facility and reviewed emissions estimates provided by the facility. We estimate total plantwide emissions of HAP, including emissions from uranium hexafluoride production and fluorine production, to be less than 5 tpy. Therefore, since there are no sources in this category with the potential to emit HAP at a level approaching the major source threshold, we are removing this source category from the list.

3. Sewage Sludge Incineration

The Sewage Sludge Incineration source category was initially listed in July 1992. Sewage sludge incinerators have been reevaluated for emissions of HAP. After evaluation of all emissions information available, including additional testing conducted since the initial listing, we have concluded that the Sewage Sludge Incineration source category does not have any sources with the potential to emit HAP at a level approaching major source levels; therefore, we are removing the Sewage Sludge Incineration source category from the list of source categories under CAA section 112.

D. Subsumptions of Source Categories

Today's notice updates the source category list to reflect the subsumption of seven categories related to cellulose production into two source categories called Cellulose Ethers Production and Miscellaneous Viscose Processes. We are combining the Carboxymethylcellulose Production, Cellulose Ethers Production, and Methylcellulose Production source categories into the Cellulose Ethers Production source category. We are also combining four existing source categories into a new source category called Miscellaneous Viscose Processes. This newly defined source category subsumes the Rayon Production, Cellulose Food Casing Manufacturing, Cellophane Production, and Cellulosic Sponge Manufacturing source categories. For further information, you should refer to the proposed preamble for the Cellulose Products Manufacturing NESHAP (65 FR 52166), which serves as the official action to combine the source categories and to name the newly defined source categories.

E. Changes to the Scope of a Source Category

Today's action serves to redefine the scope of the Process Heaters source category to only include indirect-fired process heaters.

Both direct-fired and indirect-fired process heaters were included in the initial listing of the source category. Direct-fired process heaters are those in which the products of combustion mix with process materials and the combined emissions exit the same stack. By contrast, indirect-fired process heaters are those where the process materials are not mixed with products of combustion and, therefore, the emissions arise solely from products of combustion. We included direct-fired process heaters under other MACT standards for each relevant industry source category since emissions from direct-fired heaters are source and industry specific and, therefore, only indirect-fired process heaters need to be included in the Process Heaters source category.

IV. Is This Action Subject to Judicial Review?

Section 112(e)(4) of the CAA states that, notwithstanding section 307 of the CAA, no action of the Administrator listing a source category or subcategory under section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Section 112(e)(3) states that the determination of priorities for promulgation of standards for the listed source categories is not a rulemaking and is not subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established under section 112(e) shall be subject to review under section 304 of the CAA. Therefore, today's notice is not subject to judicial review.

V. Is EPA Asking for Public Comment?

Prior to issuance of the initial source category list, we published a draft initial list for public comment (56 FR 28548, June 21, 1991). Although we were not required to take public comment on the initial source category list, we believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, we solicit public comments on actions we are contemplating. We have decided, however, that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice. Where we believe it is useful to solicit input on certain actions, we will offer interested parties an opportunity to provide comments on proposed individual emission standards.

VI. Administrative Requirements

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be ''significant'' is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of 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.

The OMB has determined that this action is not significant under terms of Executive Order 12866.

Dated: February 6, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Fuel Combustion:	
Coal- and Oil-fired Electric Utility Steam Generating Units	Added to 112(c) list 12/20/2000 (65FR79825)
Combustion Turbines	11/15/2000
Engine Test Facilities	11/15/2000
Industrial Boilers	11/15/2000
Institutional/Commercial Boilers	11/15/2000
Process Heaters	Redefined Scope as of Today 11/15/2000
Reciprocating Internal Combustion Engines	11/15/2000
Rocket Testing Facilities	11/15/2000
Stationary Internal Combustion Engines	Renamed 64FR63025(N)
Stationary Turbines	Renamed 64FR63025(N)
Non-Ferrous Metals Processing:	
Lead Acid Battery Manufacturing	Deleted 61FR28197(N)
Primary Aluminum Production	11/15/1997 62FR52383(F)
Primary Copper Smelting	11/15/2000 63FR19582(P) 63FR39326(SP)
Primary Lead Smelting	11/15/1997 64FR30194(F)
Primary Magnesium Refining	11/15/2000
Secondary Aluminum Production	11/15/1997 63FR55489(ap) 63FR55491(S) 65FR15689(F)
Secondary Lead Smelting	11/15/1994 60FR32587(F) 61FR27785(A) 61FR65334(A) 62FR32209(A) 63FR45007(A) 64FR4570(A) 64FR69637(A)
Ferrous Metals Processing:	
Coke By-Product Plants	Deleted 66FR8220(N)
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/1992 58FR57898(F) 59FR01922(C)
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/2000 66FR35326(P)
Ferroalloys Production	Renamed 64FR63025(N)
Ferroalloys Production: Silicomanganese and Ferromanganese	11/15/1997 64FR27450(F) 66FR16007(A) 66FR16024(a)
Integrated Iron and Steel Manufacturing	11/15/2000 66FR36836(P)
Iron Foundries	11/15/2000
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted 61FR28197(N)
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted 61FR28197(N)
Steel Foundries	11/15/2000
Steel Pickling—HCl Process	Renamed 64FR63025(N)
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	11/15/1997 64FR33202(F)
Mineral Products Processing:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Alumina Processing	Deleted 66FR8220(N)
Asphalt Concrete Manufacturing	Deleted as of today
Asphalt Processing	11/15/2000
Asphalt Roofing Manufacturing	11/15/2000
Asphalt/Coal Tar Application—Metal Pipes	11/15/2000
Chromium Refractories Production	Renamed 64FR63025(N)
Clay Products Manufacturing	11/15/2000
Lime Manufacturing	11/15/2000
Mineral Wool Production	11/15/1997 64FR29490(F)
Portland Cement Manufacturing	11/15/1997 64FR31897(F)
Refractories Manufacturing	11/15/2000
Taconite Iron Ore Processing	11/15/2000
Wool Fiberglass Manufacturing	11/15/1997 64FR31695(F)
Petroleum and Natural Gas Production and Refining:	
Oil and Natural Gas Production	11/15/1997 64FR32610(F)
Natural Gas Transmission and Storage	11/15/2000 64FR32610(F)
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	Renamed 11/15/1997 66FR8220(N)
Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units	11/15/1997 63FR78890(P)
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/1994 60FR43244(F) 61FR07051(C) 61FR29876(C) 62FR07937(A)
Liquids Distribution:	
Gasoline Distribution (Stage 1)	11/15/1994 59FR42788(N) 59FR64303(F) 60FR07627(C) 60FR32912(C) 60FR43244(A) 60FR57628(C) 60FR62991(S) 61FR07718(A) 61FR58547(N) 62FR09087(A)
Marine Vessel Loading Operations	11/15/1997 60FR48399(F)
Organic Liquids Distribution (Non-Gasoline)	11/15/2000
Surface Coating Processes:	
Aerospace Industries	11/15/1994 60FR45956(F) 61FR04903(C) 61FR66227(C) 63FR15016(A) 63FR46525(A) 65FR3642(a)
Auto and Light Duty Truck (Surface Coating)	11/15/2000
Flat Wood Paneling (Surface Coating)	Renamed 64FR63025(N)
Large Appliance (Surface Coating)	Redefined Scope 11/15/2000 64FR63025(N) 65FR81134(P)
Magnetic Tapes (Surface Coating)	11/15/1994 59FR64580(F)
Manufacture of Paints, Coatings, and Adhesives	11/15/2000
Metal Can (Surface Coating)	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Metal Coil (Surface Coating)	11/15/2000 63FR44616(P)
Metal Furniture (Surface Coating)	11/15/2000
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/2000
Paper and Other Webs (Surface Coating)	11/15/2000 63FR55332(P)
Plastic Parts and Products (Surface Coating)	11/15/2000
Printing, Coating, and Dyeing of Fabrics	11/15/2000
Printing/Publishing (Surface Coating)	11/15/1994 61FR27132(F)
Shipbuilding and Ship Repair (Surface Coating)	11/15/1994 60FR64330(F) 61FR30814(A) 61FR66226(C)
Wood Building Products (Surface Coating)	11/15/2000
Wood Furniture (Surface Coating)	11/15/1994 60FR62930(F) 62FR30257(C) 62FR31361(A) 63FR71376(A)
Waste Treatment and Disposal:	
Hazardous Waste Incineration	11/15/2000 64FR52828(F)
Municipal Landfills	Renamed 11/15/2000 66FR8220(N)
Municipal Solid Waste Landfills	11/15/2000 63FR66672(P)
Off-Site Waste and Recovery Operations	11/15/1994 61FR34140(F) 64FR38950(A)
Publicly Owned Treatment Works (POTW) Renamed Emissions [c]	11/15/1995 66FR8220(N)
Publicly Owned Treatment Works (POTW) [c]	11/15/1995 64FR57572(F)
Sewage Sludge Incineration	Deleted as of today
Site Remediation	11/15/2000
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	Renamed 59FR51913(N)
Agricultural Chemicals Production:	
Pesticide Active Ingredient Production	11/15/1997 64FR33549(F)
4-Chloro-2-Methylphenoxyacetic Acid Production	Subsumed 64FR63025(N)
2,4-D Salts and Esters Production	Subsumed 64FR63025(N)
4,6-Dinitro-o-Cresol Production	Subsumed 64FR63025(N)
Butadiene-Furfural Cotrimer (R–11) Production [d]	Subsumed 64FR63025(N)
Captafol Production [d]	Subsumed 64FR63025(N)
Captan Production [d]	Subsumed 64FR63025(N)
Chloroneb Production	Subsumed 64FR63025(N)
Chlorothalonil Production [d]	Subsumed 64FR63025(N)
Dacthal (tm) Production [d]	Subsumed 64FR63025(N)
Sodium Pentachlorophenate Production	Subsumed 64FR63025(N)
Tordon (tm) Acid Production [d]	Subsumed 64FR63025(N)
Fibers Production Processes:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Acrylic Fibers/Modacrylic Fibers Production	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Spandex Production	11/15/2000 65FR76408(P)
Food and Agriculture Processes:	
Baker's Yeast Manufacturing	Renamed 64FR63025(N)
Manufacturing of Nutritional Yeast	11/15/2000 63FR55812(P) 66FR27876(F)
Solvent Extraction for Vegetable Oil Production	11/15/2000 63FR34251(P) 66FR19006(F)
Vegetable Oil Production	11/15/2000 66FR8220(N)
Pharmaceutical Production Processes:	
Pharmaceuticals Production [d]	11/15/1997 63FR19151(a) 63FR50280(F) 66FR40121(F) 66FR40903(P) 66FR40121(A) 66FR40166(P)
Polymers and Resins Production:	
Acetal Resins Production	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Acrylonitrile-Butadiene-Styrene Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Alkyd Resins Production	11/15/2000
Amino Resins Production	11/15/1997 65FR3275(F)
Boat Manufacturing	Redefined scope 11/15/2000 63FR43842(P) 64FR63025(N) 66FR44218(F)
Butyl Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Cellulose Ethers Production	11/15/2000 65FR52166(P)
Carboxymethylcellulose Production	Subsumed as of today 11/15/2000
Methylcellulose Production	Subsumed as of today 11/15/2000
Epichlorohydrin Elastomers Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Epoxy Resins Production	11/15/1994 60FR12670(F)
Ethylene-Propylene Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Flexible Polyurethane Foam Production	11/15/1997 62FR05074(C) 64FR34853(F)
Hypalon (tm) Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Maleic Anhydride Copolymers Production	11/15/2000
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [d]	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [d]	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Neoprene Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Nitrile Butadiene Rubber Production	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Nitrile Resins Production	11/15/2000 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Non-Nylon Polyamides Production	11/15/1994 60FR12670(F)
Nylon 6 Production	Deleted 63FR7155(N)
Phenolic Resins Production	65FR3275(F)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Polybutadiene Rubber Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polycarbonates Production [d]	11/15/1997 64FR34853(F) 64FR63695(A) 64FR63702(A) 64FR63779(a)
Polyester Resins Production	11/15/2000
Polyether Polyols Production	11/15/1997 64FR29420(F) 64FR31895(C)
Polyethylene Terephthalate Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR30993(A) 62FR37720(A) 63FR9944(C) 63FR15312(A) 63FR67879(N) 64FR11536(A) 64FR30406(A) 64FR30456(N) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polymerized Vinylidene Chloride Production	11/15/2000
Polymethyl Methacrylate Resins Production	11/15/2000
Polystyrene Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S)
Polysulfide Rubber Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Polyvinyl Acetate Emulsions Production	11/15/2000
Polyvinyl Alcohol Production	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Polyvinyl Butyral Production	11/15/2000
Polyvinyl Chloride and Copolymers Production	11/15/2000 65FR76958(P)
Reinforced Plastic Composites Production	11/15/2000 66FR40324(P)
Styrene-Acrylonitrile Production	11/15/1994 61FR48208(F) 61FR54342(C) 61FR59849(N) 62FR01835(A) 62FR37720(A) 63FR9944(C) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Styrene-Butadiene Rubber and Latex Production [d]	11/15/1994 61FR46906(F) 61FR59849(N) 62FR01835(A) 62FR12546(N) 62FR37720(A) 63FR67879(N) 64FR11536(A) 64FR35023(S) 66FR11233(A) 66FR11543(F) 66FR36924(A) 66FR40903(A)
Production of Inorganic Chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/2000
Antimony Oxides Manufacturing	Promulgation rescheduled; deleted 64FR63025(N)
Carbon Black Production	11/15/2000 65FR76408(N)
Chlorine Production	11/15/2000
Chromium Chemicals Manufacturing	Deleted 61FR28197(N)
Cyanide Chemicals Manufacturing	11/15/2000 65FR76408(P)
Cyanuric Chloride Production	Deleted 63FR7155(N)
Fumed Silica Production	Corrected 11/15/2000 64FR63025(N)
Hydrochloric Acid Production	11/15/2000
Hydrogen Cyanide Production	Subsumed 63FR7155(N)
Hydrogen Fluoride Production	11/15/1997 64FR34853(F) 64FR63702(A) 64FR63779(a)
Phosphate Fertilizers Production	11/15/1997 64FR31358(F)
Phosphoric Acid Manufacturing	11/15/1997 64FR31358(F)
Quaternary Ammonium Compounds Production	Moved 61FR28197(N)
Sodium Cyanide Production	Subsumed 63FR7155(N)
Uranium Hexafluoride Production	Deleted as of today
Production of Organic Chemicals:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Ethylene Processes	11/15/2000 65FR76408(P)
Quaternary Ammonium Compounds Production	11/15/2000
Synthetic Organic Chemical Manufacturing	11/15/1992 59FR19402(F) 59FR29196(A) 59FR32339(N) 59FR48175(C) 59FR53359(S) 59FR54131(S) 60FR05320(A) 60FR18020(A) 60FR18026(A) 60FR63624(C) 61FR31435(A) 61FR07716(A) 61FR43544(N) 61FR64572(A) 62FR02722(A) 63FR67787(A) 64FR20189(C) 65FR3169(a)
Tetrahydrobenzaldehyde Production	Subsumed 63FR26078(F) 64FR63025(N)
Miscellaneous Processes:	
Aerosol Can-Filling Facilities	Promulgation rescheduled; deleted 64FR63025(N)
Benzyltrimethylammonium Chloride Production	11/15/2000
Butadiene Dimers Production	Renamed 61FR28197
Carbonyl Sulfide Production	11/15/2000
Chelating Agents Production	11/15/2000
Chlorinated Paraffins Production [d]	11/15/2000
Chromic Acid Anodizing	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A)
Commercial Dry Cleaning (Perchloroethylene) —Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Commercial Sterilization Facilities	11/15/1994 59FR62585(F) 61FR27785(A) 64FR67789(A) 64FR69637(A)
Decorative Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Dodecanedioic Acid Production	Subsumed 59FR19402(N)
Dry Cleaning (Petroleum Solvent)	Deleted 66FR8220(N)
Ethylidene Norbornene Production [d]	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Explosives Production	11/15/2000
Flexible Polyurethane Foam Fabrication Operations	11/15/2000 66FR41718(P)
Friction Materials Manufacturing	Name Changed as of Today 11/15/2000
Halogenated Solvent Cleaners	11/15/1994 59FR61801(F) 59FR67750(C) 60FR29484(C) 63FR24749(S) 63FR68397(A) 64FR45187(A) 64FR56173(A) 64FR67793(A) 64FR69637(A) 64FR67793(A)
Hard Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Hydrazine Production	11/15/2000
Industrial Cleaning (Perchloroethylene)—Dry-to-dry machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A)
Industrial Process Cooling Towers	11/15/1994 59FR46339(F)
Leather Finishing Operations	11/15/2000 63FR58702(P)
Leather Tanning and Finishing Operations	Renamed 66FR8220(N)
Miscellaneous Viscose Processes	Added as of today 11/15/2000 65FR52166(P)
Cellophane Production	Subsumed as of today 11/15/2000 65FR52166(P)
Cellulose Food Casing Manufacturing	Subsumed as of today 11/15/2000 65FR52166(P)
Cellulosic Sponge Manufacturing	Subsumed as of today Added 11/15/2000 64FR63025 65FR52166(P)
Rayon Production	Subsumed as of today 11/15/2000 65FR52166(P)
OBPA/1,3-Diisocyanate Production [d]	11/15/2000
Paint Stripper Users	Renamed 64FR63025(N)
Paint Stripping Operations	11/15/2000
Photographic Chemicals Production	11/15/2000

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Phthalate Plasticizers Production	11/15/2000
Plywood and Composite Wood Products	11/15/2000
Plywood/Particle Board Manufacturing	Renamed 64FR63025(N)
Polyether Polyols Production	Moved 61FR28197(N)
Pulp and Paper Production	Promulgation rescheduled 11/15/2000 64FR63025 63FR18504(F) 63FR42238(C) 63FR49455(A) 63FR71385(A) 64FR17555(A) 65FR3907(a) 65FR80755(F) 66FR24268(C)
Rocket Engine Test Firing	Moved and renamed 64FR63025(N)
Rubber Chemicals Manufacturing	11/15/2000
Rubber Tire Manufacturing	11/15/2000 63FR62414(P)
Semiconductor Manufacturing	11/15/2000
Symmetrical Tetrachloropyridine Production[d]	11/15/2000
Tetrahydrobenzaldehyde Production	Moved 64FR63025(N)
Tire Production	Renamed 64FR63025(N)
Wet-Formed Fiberglass Mat Production	Added as of today 11/15/2000 65FR34277(P)
Wood Treatment	Deleted 61FR28197(N)
Categories of Area Sources:	
Asbestos Processing	Deleted 60FR61550
Chromic Acid Anodizing	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Commercial Dry Cleaning (Perchloroethylene) -Dry-to-Dry Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A) 64FR69637(A)
Commercial Dry Cleaning (Perchloroethylene) -Transfer Machines	11/15/1992 58FR49354(F) 58FR66287(A) 60FR64002(A) 61FR27785(A) 61FR49263(A) 64FR69637(A)
Commercial Sterilization Facilities	11/15/1994 59FR62585(F) 61FR27785(A) 64FR67789(A) 64FR69637(A)

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 2002]

Industry group Source category [a]	Statutory promulgation date/**Federal Register** citation [b]
Decorative Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Halogenated Solvent Cleaners	11/15/1994 59FR61801(F) 59FR67750(C) 60FR29484(C) 63FR24749(S) 63FR68397(A) 64FR45187(A) 64FR56173(A) 64FR67793(A) 64FR69637(A) 64FR67793(A)
Hard Chromium Electroplating	11/15/1994 60FR04948(F) 60FR27598(C) 60FR33122(C) 61FR27785(A) 61FR04463(A) 62FR42918(A) 64FR69637(A)
Hazardous Waste Incineration	11/15/2000 64FR52828(F)
Portland Cement Production	11/15/1997 64FR31897(F)
Secondary Aluminum Production	11/15/1997 63FR55489(ap) 63FR55491(S) 65FR15689(F)
Secondary Lead Smelting	11/15/1997 60FR32587(F) 61FR27785(A) 61FR65334(A) 62FR32209(A) 64FR69637(A)

[a] Only sources within any category located at a major source shall be subject to emission standards under CAA section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] This schedule does not establish the order in which the rules for particular source categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to CAA section 112(d) for a given source category be promulgated by the specified date.

The markings in the ''Statutory Promulgation Date/**Federal Register** Citation'' column of Table 1 denote the following:

(A): final amendment to a final rulemaking action

(a): proposed amendment to a final rulemaking action

(C): correction (or clarification) published subsequent to a proposed or final rulemaking action

(F): final rulemaking action

(N): notice to announce general information, such as an Agency decision, availability of new data, administrative updates, etc.

(P): proposed rulemaking action

(ap): advance notice of proposed rulemaking action

(R): reopening of a proposed action for public comment

(S): announcement of a stay, or partial stay, of the rule requirements

Moved: the source category is relocated to a more appropriate industry group

Subsumed: the source category is included within the definition of another listed category and therefore is no longer listed as a separate source category

Renamed: the title of this source category is changed to a more appropriate title

Deleted: the source category is removed from the source category list

[c] The Publicly Owned Treatment Works (POTW) Emissions source category had a statutory deadline for regulatory promulgation of November 15, 1995, as established by CAA section 112(e)(5). However, for purposes of determining the 18-month period applicable to the POTW source category under section 112(j)(2), the promulgation deadline was November 15, 1997. This latter date is consistent with the section 112(e) schedule for the promulgation of emissions standards, as published in the **Federal Register** on December 3, 1993 (58 FR 63941).

[d] Equipment handling specific chemicals for these categories or subsets of these categories is subject to a negotiated standard for equipment leaks contained in the Hazardous Organic NESHAP (HON), which was promulgated on April 22, 1994. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in Section XX.XO(c) of the March 6, 1991 **Federal Register** notice (56 FR 9315).

[FR Doc. 02–3348 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7141–5]

Notice of Open Meeting; Environmental Financial Advisory Board; March 4–6, 2002

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold two open meetings on March 4–6, 2002. Both meetings will be held at the National Press Club, 14th and F Streets, NW., Washington, DC, 13th Floor.

On Monday, March 4, 2002 EFAB's Cost Effective Environmental Management Workgroup (CEM) will hold a Workshop on the Governmental Accounting Standards Board Statement No. 34 (GASB 34). The meeting will be held in the Zenger Room and will begin at 9 a.m. and end at approximately 3 p.m.

The purposes of the workshop are to: (1) Gain a better understanding of GASB 34 among EFAB members and EPA staff; (2) assess how various stakeholders might be affected by implementation of the standard and examine its implications; and (3) identify possible recommendations for EFAB to make to EPA with respect to its role and any action it may take. The meeting will consist of a group of informed panelists from the Government Accounting Standards Board, public utilities, EPA, as well as the financial services industry, who will share their perspectives on GASB 34. Information from this meeting will help the Board develop a report with advice and recommendations to EPA.

On March 5–6, 2002 a meeting of the full Board will be held in the Holeman Lounge. The Tuesday, March 5 session will run from 8:30 a.m. to 5 p.m. and the Wednesday, March 6 session will begin at 8 a.m. and end at 11 a.m.

The purposes of this meeting are to: (1) Hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities; and (2) discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: Stewardship financing, cost-effective environmental management, international initiatives, superfund and brownfields initiatives, and public finance issues.

Both meetings are open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: February 4, 2002.

Joseph Dillon,

Comptroller.

[FR Doc. 02–3358 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–1]

Paying for Water Quality: Managing Funding Programs To Achieve the Greatest Environmental Benefits; a Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency will hold a public workshop on March 14–15, 2002, to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit.

DATES: The workshop will be held on March 14–15, 2002.

ADDRESSES: The workshop will be held at the Environmental Protection Agency, EPA East Building, 1201 Constitution Avenue, NW., Washington, DC 20004, in the EPA Hearing Room, Room 1153.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*

Registration: Though the workshop is free, registration is requested for planning purposes. Please send your name, title, affiliation, address, phone number, fax, and email to Nikki Cleaveland at Northbridge Environmental, by fax, 202–625–0461, or by email, *ncleaveland@nbenvironmental.com.*

SUPPLEMENTARY INFORMATION: EPA will convene this public workshop, Paying for Water Quality: Managing Funding Programs to Achieve the Greatest Environmental Benefits, to discuss the current status of water quality funding in the United States, provide an overview of funding programs and illustrate their use through case studies by practitioners from around the country. The Committee on Appropriations, in House Report 107–159, identified a range of issues affecting water quality. The Committee particularly focused on issues concerning nonpoint source pollution. It noted that ''septic system repair and management projects and other nonpoint source pollution prevention and control measures, which can produce substantial benefits of water quality protection, are not eligible for SRF funding in most of the states.'' It also noted that many recipients of federal funding have not instituted user fees to provide for long-term maintenance of infrastructure.

To address these problems, EPA will hold a workshop to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit. The agenda will include topics such as an overview of the Clean Water State Revolving Fund program, the role of other federal water quality funding programs, funding decentralized wastewater systems and nonpoint source projects, exploring the use of environmental outcomes and affordability studies, environmental performance tracking, and efficient wastewater management. Invited to the workshop will be representatives from the State/EPA SRF Workgroup, the Environmental Council of the States, Environmental Finance Centers, centralized and decentralized wastewater and nonpoint source stakeholder groups and any member of the public who wishes to attend. Participants will have the opportunity to openly discuss present concerns and possible solutions.

Dated: February 6, 2002.

Richard T. Kuhlman,

Director, Municipal Support Division, Office of Wastewater Management.

[FR Doc. 02–3364 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7142–7]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency (''EPA'') is hereby providing notice of a proposed administrative *de*

minimis settlement concerning the Operating Industries, Inc. Landfill Superfund Site in Monterey Park, California (the ''OII Site''). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 10 settling parties, 9 of which have a limited ability to pay, for the OII Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by the California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $284,047 toward OII Site response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before March 14, 2002.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 01–13. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montebello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Eric A. Esler, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: *esler.eric@epa.gov*; Tel: (415) 972–3947.

Dated: January 30, 2002.

Jane Diamond,

Acting Director, Superfund Division, EPA Region IX.

[FR Doc. 02–3363 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting, Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 14, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 10, 2002 (Open and Closed)

B. Reports

- Report on Corporate Approvals
- Status Report on Approval of Loans to Designated Parties Rule
- OMB Budget Proposal
- Trends in Debt Issuances

*Closed**

- OSMO Report

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: February 8, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–3560 Filed 2–8–02; 3:54 pm]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas, (FEMA–1400–DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 24, 2002:

Craighead, Greene, Independence, and White Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3316 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1400–DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: January 30, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 30, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3317 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1400–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1400-DR), dated January 24, 2002, and related determinations.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 24, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms and flooding beginning on December 15, 2001, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Ashley, Clay, Cleburne, Columbia, Crittenden, Franklin, Jackson, Lincoln, Little River, Logan, Monroe, Poinsett, Prairie, Scott, Stone, and Woodruff Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3318 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from a severe winter ice storm on January 30, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency

to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kay, Kingfisher, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Roger Mills, Texas, Washington, Washita, Woods, and Woodward Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under Public Assistance at 75 percent Federal funding.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–3315 Filed 2–11–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Application and Reporting Requirements to support projects under the Adoption Opportunities Program.

OMB No.: New Request.

Description: The major efforts mandated by the authorizing Adoption Opportunities program legislation, section 205 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, (Pub. L. 95–266), as amended are:

(a) The development and implementation of a national adoption and foster care data gathering and analysis system;

(b) The development and implementation of a national adoption information exchange system;

(c) The development and implementation of an adoption training and technical assistance program;

(d) Increasing services in support of the placement in adoptive families of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families;

(e) Increasing post-legal adoption services for families who have adopted children with special needs;

(f) Studying the nature, scope, and effects of the placement of children in kinship care arrangements, pre-adoptive, or adoptive homes;

(g) Studying the efficacy of States contracting with public or private nonprofit agencies (including community-based and other organizations);

(h) Consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the DHHS relating to adoption;

(i) Maintain a National Resource Center for Special Needs Adoption; and

(j) Provide for the provision of programs aimed at increasing the number of minority children (who are in foster care and have the goal of adoption) placed in adoptive families, with a special emphasis on recruitment of minority families.

In these areas, research and demonstration grants are awarded through a competitive process to States, local government entities, federally recognized Indian Tribes and tribal organizations, colleges and universities, public or private nonprofit licensed child welfare or adoption agencies, adoption exchanges and community-based organizations with experience in working with minority populations.

Each of these areas is addressed each year, as new awards or as continuations of awards from previous years' competitions. Over time, the projects have demonstrated that improvements in placing children with adoptive families are achieved when permanent plans are made and carried out very early in the placement; when there are sufficiently trained and experienced staff; and when there are resources available and administrative commitments to adoption and to coordinated community-based efforts.

Respondents: Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
EZ Form	80	1	20	1600
Estimated Total Annual Burden Hours				1,525 hours

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by February 28, 2002. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.dhhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by February 28, 2002: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paper Reduction Project, 725 17th Street, NW., Washington, DC 20503.

Dated: February 5, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3352 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community Based Family Resource and Support Program

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Family Resource and Support Grants (CBFRS), as set forth in Title II of Public Law 104–235, Child Abuse Prevention and Treatment Act Amendments of 1996, and in the process of reauthorization, provides direction to the States and Territories to accomplish the purposes of (1) supporting State efforts to develop, operate, expand and enhance a network of community-based, prevention focused, family resource and support programs that coordinate resources among existing human service organizations within the State; and (2) fostering an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in Public Law 104–235 at sections 202(1)(A); 202(q)(B); 203(b)(1)(B); 205; 207; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2080
Annual Report	52	1	24	1248
Estimated Total Annual Burden Hours				3328

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3349 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Subject for OMB Review; Comment Request

Title: Evaluation of the Early Head Start Fatherhood Demonstration.

OMB No.: New Collection.

Description: ACYF, in partnership with the Office of Child Support Enforcement (OCSE), recently funded 21 Early Head Start grantees to develop and implement creative practices to increase the involvement of fathers in their Early Head Start program and in the lives of their children. This submission requests approval to conduct the survey of demonstration staff and to collect father participation data from the demonstration programs.

Respondents: To reduce the burden of demonstration staff, the survey will be configured in four versions. The Director Version will be completed by the Early Head Start program directors. The Father Coordinator Version will be completed by the staff member responsible for father activities. The Family Specialist Version will be completed by the staff member who works most closely with the Early Head Start families in the home. The Teacher Version will be completed by the staff member working with families of children participating in the Early Head Start child care programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
"4 Versions"	76	2	.296	45
Estimated Total Annual Burden Hours				45

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3350 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: April 2002 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	47,000	1	0.0246	1136
Estimated Total Annual Burden Hours				1136

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 5, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3351 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Effective and Innovative Practices in Child Abuse and Neglect Prevention.

OMB No.: New collection.

Description: With increasing understanding and recognition of the individual and family risk factors that increase the likelihood of child maltreatment, particularly since the 1990s, the role and importance of prevention has been vigorously promoted. The development, funding, and implementation of programs and initiatives with a specific focus on the prevention of child maltreatment, as a consequence, has blossomed.

Child abuse and neglect prevention today includes a broad spectrum of programs and services, including parent education, home visitation, respite care, support groups, mentoring, child personal safety education, family resource centers, media campaigns, and policy advocacy campaigns. Programs may target the general population with the goal of facilitating prevention through awareness, and/or may target specific populations at risk for child abuse/neglect with the goal of ameliorating the factors placing them at risk. However, the precise nature of these efforts—and their effectiveness—is not yet well understood, and information has not been systematically documented. As programs have proliferated in both type and number, the need for information on program effectiveness becomes more acute.

Data collection for this project will rely on a nomination process that will identify programs and initiatives operating around the country in two major categories, including (1) Effective programs, which demonstrate or report positive prevention outcomes using experimental or quasi-experimental research methods and (2) Innovative programs, which have overcome a critical challenge or obstacle using a particularly creative method or approach. By identifying and showcasing effective and innovative practices, this project will disseminate critical information to local jurisdictions that are making decisions about allocating and/or targeting resources for program development and implementation.

Respondents: The universe of potential nominations consists of the child abuse and neglect professional community in its entirety, which includes practitioners, service providers, policy makers in state and local agencies, researchers, advocates, and other affiliated parties. A nomination instrument has been designed, with input from a diverse group of experts, that specifies rules and provides detailed guidance on procedures for submission.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Track 1 Nominations: Effective Programs	10–30	1	6	60–180
Track II Nominations: Innovative Programs	150–200	1	4	600–800
Estimated Total Annual Burden Hours				660–980

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–3353 Filed 2–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01B–0431]

International Conference on Harmonisation; Draft Recommendations for the Revision of the Permitted Daily Exposures for Two Solvents, N-Methylpyrrolidone and Tetrahydrofuran, According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft recommendations for the revision of the permitted daily exposures (PDE) for two solvents, n-methylpyrrolidone (NMP) and tetrahydrofuran (THF), according to the maintenance procedures for guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The draft recommendations were prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This document also describes procedures for proposing future revisions to the PDE.

DATES: Submit written or electronic comments on the draft recommendations by March 14, 2002.

ADDRESSES: Submit written comments on the draft recommendations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of these draft recommendations to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to documents and maintenance procedures.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–827–2120.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFG–1),Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0865.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (65 FR 56468, September 19, 2000), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of December 24, 1997 (62 FR 67377), FDA published the ICH guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The guidance makes recommendations as to what amounts of residual solvents are considered safe in pharmaceuticals. The guidance recommends use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents. Upon issuance in 1997, the text and appendix 1 of the guidance contained several tables and a list of solvents categorizing residual solvents by toxicity, classes 1 through 3, with class 1 being the most toxic. The Quality Expert Working Group (EWG) agreed that the PDE could be modified if reliable and relevant toxicity data were brought to the attention of the group and that the modified PDE would result in a revision of the tables and list.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance EWG (Q3C EWG). The agreement provided for the revisitation of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided that new solvents and PDEs could be added to the tables and list based on adequate toxicity data. This notice announces the availability of draft recommendations for the revision of the PDE for NMP and THF according to the Q3C maintenance procedures. It also briefly describes the process for proposing future revisions to the PDE.

II. Draft Recommendations to Revise the Tables and List

In July of 2000, the ICH Steering Committee agreed that draft proposals and recommendations to revise the PDE for the solvents NMP and THF should be made available for public comment. The draft recommendations are the product of the Q3C EWG review of new data.

A. N-Methylpyrrolidone (NMP)

The Q3C EWG received new toxicity data for the solvent NMP in late 1999. The data had been provided to FDA by the NMP producers group, who had proposed moving NMP from class 2 to class 3. The data resulted from a 2-year chronic feeding study in rats performed by E.I. Dupont de Nemours & Co (unpublished data). The data were sent to the members of the Q3C EWG for their analysis. These data appeared to be the best available upon which to make a recommendation to the ICH Steering Committee regarding a change in the status of NMP. At the last ICH meeting, February 28 to March 2, 2000, the ICH Steering Committee was briefed on the results of the EWG's analysis. The recommendation was to keep NMP in class 2 and to reduce the PDE. The analysis and the draft recommendation are available for review at http://www.fda.gov/cder/audiences/iact/iachome.htm. They are also available from the Division of Drug Information (HFD–240); address above.

B. Tetrahydrofuran (THF)

The Q3C EWG reviewed new toxicity data for the solvent THF. The data were published by the U.S. National Toxicology Program and consisted of data from several mutagenicity studies and two carcinogenicity studies in rodents via the inhalational route of administration. Information was sent to the members of the Q3C EWG for their analysis. At the last ICH meeting, February 28 to March 2, 2000, the ICH Steering Committee was briefed on the results of the Q3C EWG's analysis. The recommendation was to move THF from class 3 into class 2. The analysis and the draft recommendation are available for review at http://www.fda.gov/cder/audiences/iact/iachome.htm. They are also available from the Division of Drug Information (HFD–240) (address above).

The agency is interested in comments on the draft recommendations regarding the classification of NMP and THF. Comments about the draft recommendations will be considered by FDA and the Q3C EWG.

III. Process for Proposing Future Revisions

In November 2000, the ICH Steering Committee agreed to formalize the maintenance procedures for the guidance entitled ''Q3C Impurities: Residual Solvents.'' The maintenance procedures include multiple ways to establish a PDE for a new solvent or to revise a PDE for an already classified solvent. A proposal with supporting information can be submitted to the ICH Secretariat, to the regulatory agency via the public docket, or to an ICH-involved scientist in an agency or in a pharmaceutical company to submit to the ICH Secretariat. The maintenance procedures state that this information should be based on significant toxicity data from studies such as genotoxicity studies, repeat-dose studies, reproductive toxicity studies, and/or other relevant toxicology studies. Single-dose toxicity data alone are not sufficient. The toxicity data should be of good laboratory practice quality and sufficient to calculate a PDE for a new solvent that will place the new solvent into a toxicity class.

The details of the ICH Q3C maintenance procedures are available on the Internet at http://www.fda.gov/cder/audiences/iact/iachome.htm.

IV. Procedural Changes to Facilitate the Maintenance Process

To facilitate the maintenance process, FDA has decided to delink the tables and list from the Q3C guidance and create a stand alone guidance entitled ''Q3C: Tables and List.'' Creating a stand alone document will enable the agency to update the tables and list when ICH endorses a recommendation to recategorize, remove, or add solvents without revising the Q3C guidance. In addition, the 1997 guidance has been reformatted consistent with FDA's good guidance practices regulation (21 CFR 10.115). Both the reformatted Q3C guidance and the delinked tables and list are available on the agency's Web sites.

The availability of draft and final recommendations for revisions of PDEs and classifications will be announced through a notice in the **Federal Register**. In addition, an FDA Web site at http://www.fda.gov/cder/audiences/iact/iachome.htm details the maintenance procedures, provides contact information, and allows the dissemination of the revised information as quickly as possible. In the future, notices in the **Federal Register** announcing proposals and draft and final recommendations to change the list will send the reader to the Web site for details.

The Q3C EWG's draft recommendations for the two solvents will, when finalized, represent the agency's current thinking on this topic. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the recommendations to change the list by March 14, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft recommendations and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the Q3C documents at http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/guidelines.htm. Information on the Q3C maintenance process as well as proposals, data analysis, and draft and final recommendations for revisions to the tables and list are being made available at http://www.fda.gov/cder/audiences/iact/iachome.htm. The electronic address for submitting comments to Dockets Management Branch is http://www.fda.gov/dockets/ecomments.

Dated: February 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–3388 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Peripheral and Central Nervous System Drugs Advisory Committee scheduled for February 15, 2002. The meeting was announced in the **Federal Register** of January 22, 2002 (67 FR 2891 to 2892).

FOR FURTHER INFORMATION CONTACT: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301 827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543.

Dated: February 6, 2002.

Bonnie H. Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–3372 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0577]

Medical Devices; Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA.'' This draft guidance will serve as a special control for cutaneous carbon dioxide ($PcCO_2$) and cutaneous oxygen (PcO_2) monitor devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these device types. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by May 13, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document describes a means by which cutaneous carbon dioxide ($PcCO_2$) and cutaneous oxygen (PcO_2) monitor devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate carbon dioxide ($PcCO_2$) or oxygen (PcO_2) monitor device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO2) Monitors; Draft Guidance for Industry and FDA.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800 –899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1335) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access.

Updated on a regular basis, the CDRH Web site includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written or electronic comments on the draft guidance by May 13, 2002. Submit two copies of any comments, except individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 29, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–3280 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0049]

Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees.'' This draft document is intended to provide guidance for industry, FDA staff (including special Government employees (SGEs), and other interested stakeholders concerning disclosure of financial interests for which FDA advisory committee SGEs have received conflict of interest waivers. This draft guidance describes a new policy of disclosing specific information concerning the financial interests that give rise to the waiver of a conflict of interest.

DATES: Submit written or electronic comments by March 14, 2002, to ensure adequate consideration in preparation of the final guidance document. Comments on this guidance may be submitted at any time.

ADDRESSES: Submit written comments or requests for copies of the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION:

I. Background

Two separate statutes govern whether FDA advisory committee SGEs are prohibited from participating in a particular meeting because of a conflict of interest with the work the committee is to perform: (1) Section 505(n)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(n)(4)), which is applicable to FDA SGEs working on advisory committees concerning a clinical investigation of a drug or approval for marketing of a drug or biologic; and (2) 18 U.S.C. 208, which is applicable to all Federal Government employees, including SGEs. Both statutes provide for waivers of conflicts of interest under certain conditions. Both statutes also provide for public disclosure of any conflict of interest for which a waiver has been granted. The regulation in 18 U.S.C. 208 provides for disclosure of waiver information upon request but permits agencies to redact any information that would be exempt under the Freedom of Information Act, 5 U.S.C. 552. In addition, section 505(n)(4) of the act requires SGEs to publicly disclose all conflicts of interest.

The Office of Government Ethics (OGE) has concluded that 18 U.S.C. 208 grants agencies discretion in disclosing information under 18 U.S.C. 208 where there is no foreseeable harm that will be caused by the disclosure. Similarly, the Office of Legal Counsel (OLC), Department of Justice, has concluded that FDA has discretion under section 505(n)(4) of the act to tailor the scope of the disclosure to achieve the statute's goal. FDA may weigh the competing public interests at stake. For example, the statute does not intend that the disclosure be so intrusive or onerous as to make many individuals unwilling to serve on advisory committees.

In making a decision concerning how much information to disclose in any given case, FDA has always had to balance the following competing public interests: (1) Providing as much information to the public as possible about the qualifications and abilities of the SGEs involved in the advisory committee process so that individuals may weigh the advice, (2) protecting the reasonable privacy expectations of the SGEs in their personal financial affairs, and (3) protecting FDA's interest in being able to attract sufficient expertise to the committee to provide the most reliable advice.

In the past, FDA has struck a balance between these interests by disclosing the names of individual SGEs who had received waivers and whether the waiver was granted under 18 U.S.C. 208 or section 505(n)(4) of the act, without disclosing any details about the actual financial interest at stake. In the interest of increasing transparency, FDA is now proposing to strike a different balance by disclosing more details. This disclosure, of course, will provide the public with more information concerning the financial interests of the SGEs participating, but it will also entail additional exposure of what may be private financial interests of the SGEs.

II. The Proposed New Procedures

FDA is proposing that, for advisory committee meetings to consider particular matters relating to particular products, additional disclosure of certain details concerning conflicts of interest that have been waived is warranted. In the interest of uniformity, FDA is further proposing to provide for the same degree of disclosure for waivers granted under either 18 U.S.C. 208 or section 505(n)(4) of the act for all centers and will follow similar procedures for both. With regard to committees considering general matters, see the discussion in section III of this document.

The reasons why FDA is proposing this change are twofold. First, FDA recently surveyed SGEs as to whether they were willing to provide greater public disclosure of financial interests giving rise to conflicts of interest for which waivers are received. FDA sent a detailed questionnaire to all SGEs asking for their opinion on whether

additional disclosure would be advisable. The survey and its tabulated results can be obtained by sending an electronic request to the Dockets Management Branch (address above). The results of that survey showed that, in general, SGEs were willing to tolerate greater disclosure of the financial interests than FDA had been providing.

Second, OLC concluded that section 505(n)(4) of the act required meaningful public disclosure that will adequately enable a reasonable person to understand the nature of the conflict and the degree to which it could be expected to influence the recommendations the SGE will make.

III. General Matters Waivers Excluded

Unlike advisory committee meetings to consider particular matters relating to particular products, committee meetings to consider more general matters do not have a unique impact on any personal or imputed financial interests. Such matters are likely to affect classes of similarly situated products and manufacturers to the same extent. Matters of such general applicability give no particular advantage to any individual manufacturer. Therefore, it is recognized that participation in committee meetings to consider general matters poses less risk of a conflict of interest. For that reason, FDA will continue to address committees considering general matters in a way that reflects these inherent differences. FDA will continue its global screening process for each general matter meeting, but in the public's interest of time and utility, it will read an abbreviated statement concerning conflicts of interest.

IV. Significance of Guidance

The draft guidance entitled ''Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees'' is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

V. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance to ensure adequate consideration in preparation of the final guidance document by March 14, 2002. However, interested persons may submit written or electronic comments at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at http://www.fda.gov/oc/guidance/advisorycommittee.html.

Dated: February 5, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–3279 Filed 2–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Cancellation of a Fiscal Year (FY) 1999 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Cancellation of future application receipt dates under SAMHSA/CSAT Comprehensive Community Treatment Program (PA 99–050).

SUMMARY: This notice is to inform the public that the SAMHSA/CSAT program announcement, PA 99–050, Comprehensive Community Treatment Program, is being cancelled. Effective immediately, no new applications will be received, reviewed, or funded under this announcement.

A notice of funding opportunities under the Comprehensive Community Treatment Program was published in the **Federal Register** on March 8, 1999 (Vol. 64, Number 44, pages 11027–11031). Subsequent modification/clarification notices for this program were published in the **Federal Register** on December 13, 1999, and on April 27, 2001. This cancellation notice applies to both the original funding opportunity and to the subsequent modification/clarification notices.

Information related to this notice may be obtained from: Tom Edwards, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Tele: 301–443–8453, e-mail: *tedwards@samhsa.gov.*

Dated: February 6, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–3389 Filed 2–11–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada)

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; BLM public lands disposal and acquisition processes; fire rehabilitation projects progress reports; discussion of a recreation fee demonstration program for Sand Mountain; review and RAC recommendations on the Walker River Basin EIS; and other topics the council may raise.

DATES AND TIMES: The RAC will meet on Thursday, March 28, 2002, from 9 a.m. to 5 p.m., and Friday, March 29, 2002, from 8 a.m. to 3 p.m., at the BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada. All meetings are open to the public. A general public comment period will be held on Thursday, March 28, 2002, at 4 p.m.

A detailed agenda will be available on the internet by March 7, 2002, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Mark Struble, Carson

City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 02–3313 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Watershed Cooperative Agreement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of funds for the Watershed Cooperative Agreement Program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is announcing its intent to solicit applications from eligible, not-for-profit candidates for funding under the Watershed Cooperative Agreement Program to undertake local acid mine drainage reclamation projects.

DATES: Applications for the cooperative agreements should be submitted to the appropriate individual listed under **ADDRESSES AND FURTHER INFORMATION** starting February 12, 2002. Applications will be accepted until all available funds have been awarded.

ADDRESSES AND FURTHER INFORMATION: Requests for an application package, which includes further information on the program, the application forms and evaluation criteria, should be directed to the appropriate Appalachian Clean Streams Coordinator: *Alabama:* Jeannie O'Dell, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, AL 35209, Telephone 205–290–7282, ext. 21; *Illinois:* Ken Foit, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext. 229; *Indiana:* Michael Kalagian, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext. 234; *Iowa:* Perry Pursell, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext. 108; *Kentucky:* Dave Beam, Lexington Field Office, 2675 Regency Road, Lexington, KY 40503, Telephone 859–260–8400 ext. 241; *Maryland:* Peter Hartman, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone 412–937–2905; *Missouri:* Perry Pursell, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext. 108; *Ohio:* Max Luehrs, Columbus Area Office, 4480 Refugee Road, Suite 201, Columbus, OH 43232, Telephone 614–866–0578 ext. 110; *Oklahoma:* Daniel Trout, Tulsa Field Office, 5100 East Skelly Drive S–550, Tulsa, OK 74135, Telephone 918–581–6431 ext. 25; *Pennsylvania:* David Hamilton, Harrisburg Field Office, 415 Market Street, Suite 3, Harrisburg, PA 17101, Telephone 717–782–2285 ext. 15; *Tennessee:* Danny Ellis, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, Telephone 865–545–4103 ext. 147; *Virginia:* Ronnie Vicars, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, VA 24219, Telephone 276–523–0024 ext. 33; *West Virginia:* Rick Buckley, Charleston Field Office, 1027 Virginia Street East, Charleston, WV 25301, Telephone 304–347–7162 ext. 3024.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2002, OSM expects to award up to 2.7 million dollars to eligible not-for-profit groups to undertake actual construction projects to clean up streams impacted by acid mine drainage. The maximum award amount for each cooperative agreement normally will be $100,000. The cooperative agreements will have a performance period of two years. The funds primarily are to be used for the construction phase of the project; however, any cost (administrative or construction) associated with the completion of the project is allowable. The requested OSM funding should be the final amount necessary to complete the project. There must be demonstrated public support for the project.

Eligible applicants are not-for-profit, established organizations with IRS 501(c)(3) status. Applicants must have other partners, contributing either the funding or in-kind services needed to complete the project.

Projects in the following States are eligible: Alabama, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia and West Virginia. Projects must meet eligibility criteria for coal projects outlined in Section 404 of the Surface Mining Control and Reclamation Act of 1977:

> Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes * * * and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act [August 3, 1977], and for which there is no continuing reclamation responsibility under State or other Federal laws.

The project must produce tangible results, e.g., fishery restored, stream miles improved, educational and community benefits, pollutants removed from the streams. There must be a plan to address any ongoing operation/maintenance considerations.

Two copies of a complete application should be submitted to the appropriate Appalachian Clean Streams Coordinator identified under **ADDRESSES** and **FURTHER INFORMATION**. Awards are subject to the availability of funds. Applications will receive technical and financial management reviews.

Dated: January 15, 2002.

Glenda Owens,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 02–3338 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–004]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: February 20, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–413 and 731–TA–913–916 and 918 (Final)(Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 8, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–3484 Filed 2–8–02; 11:29 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX PROGRAM).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 2002.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins on or after April 7, 2002.

Pay grade	Monthly rate
(1) Commissioned Officers	
01–10	$14,654
0–9	14,028
0–8	12,975
0–7	11,792
0–6	9,944
0–5	8,343
0–4	7,042
0–3	5,571
0–2	4,384
0–1	3,289
(2) Commissionoed Officers With Over 4 Years Active Duty As An Enlisted Member or Warrant Officer	
0–3E	6,450
0–2E	5,180
0–1E	4,359
(3) Warrant Officers	
W–5	7,282
W–4	6,394
W–3	5,281
W–2	4,581
W–1	3,806
(4) Enlisted Personnel	
E–9	5,972
E–8	4,957
E–7	4,379
E–6	3,806
E–5	3,166
E–4	2,648
E–3	2,337
E–2	2,242
E–1	2,025

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on February 5, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–3340 Filed 2–11–02; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 75—Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.

2. *Current OMB approval number:* 3150–0055.

3. *How often the collection is required:* Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur. Nuclear material accounting and control information is submitted in accordance with specified instructions.

4. *Who is required or asked to report:* All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

5. *The number of annual respondents:* 6. One reporting and recordkeeping and five others recordkeeping only. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the U.S. State system (Nuclear Materials Management and Safeguards System).

6. *The number of hours needed annually to complete the requirement or request:* 2,400 (.2 hours for reporting and 2,400 hours for recordkeeping).

7. *Abstract:* 10 CFR part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one NRC-licensed facility pursuant to 10 CFR 75.41.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–3366 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 100, ''Appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants.''

2. *Current OMB approval number:* 3150–0093.

3. *How often the collection is required:* As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power and test reactors constructed and licensed in accordance with 10 CFR Parts 50 and 52 and the Atomic Energy Act of 1954, as amended.

4. *Who is required or asked to report:* Applicants and licensees for nuclear power and test reactors.

5. *The number of annual respondents:* 1.

6. *The number of hours needed annually to complete the requirement or request:* 9,000.

7. *Abstract:* 10 CFR part 100, ''Reactor Site Criteria,'' establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR parts 50 or 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. Non-seismic siting criteria must also be evaluated. Non-seismic siting criteria include such factors as population density, the proximity of man-related hazards, and site atmospheric dispersion characteristics. NRC uses the information required by 10 CFR part 100 to evaluate whether natural phenomena and potential man-made hazards will be appropriately accounted for in the design of nuclear power and test reactors.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC Home Page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–3367 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–71 and DPR–62, issued to Carolina Power and Light Company (CP&L, the licensee), for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendments would allow an increase in the licensed power from 2558 megawatts thermal (MWt) to 2923 MWt. This change represents an increase of approximately 15 percent above the current licensed power. The proposed amendment would also change the operating licenses and the technical specifications appended to the operating licenses to provide for implementing uprated power operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By March 14, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that 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 petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated August 9, 2001, as supplemented by letters dated October 17, November 7, November 12, November 28, November 30, December 10, and December 20, 2001, which are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 6th day of February 2002.

For the Nuclear Regulatory Commission.

John M. Goshen,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3365 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District (OPPD) Fort Calhoun Station, Unit 1 Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–40 for an Additional 20-Year Period

On January 11, 2002, the U.S. Nuclear Regulatory Commission received, by letter dated January 9, 2002, an application from the Omaha Public Power District (OPPD), filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which authorizes the applicant to operate the Fort Calhoun Station, Unit 1 (FCS), for an additional 20-year period. The current operating license for FCS expires on August 9, 2013. FCS is a pressurized water reactor designed by Combustion Engineering and is located in Washington County, Nebraska. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The license renewal application for the Fort Calhoun Station is also available to local residents at the Blair Public Library in Blair, NE, and the W. Dale Clark Library in Omaha, NE.

Dated at Rockville, Maryland, the 6th of February, 2002.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Program Director, License Renewal and Environmental Impact Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3368 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Reactor Fuels; Postponed

The meeting of the ACRS Subcommittee on Reactor Fuels scheduled to be held on February 12, 2002, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been postponed at the request of the NRC staff. Notice of this meeting was published in the **Federal Register** on Tuesday, January 29, 2002 (67 FR 4290). Rescheduling of this meeting will be announced in a future **Federal Register** Notice.

For further information contact: Ms. Maggalean W. Weston, cognizant ACRS staff engineer (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST) or by e-mail *MWW@NRC.gov.*

Dated: February 6, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–3369 Filed 2–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 11, 18, 25, March 4, 11, 18, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 11, 2002

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

1:55 p.m.—Affirmation Session (Public Meeting)

2:00 p.m.—Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.—Briefing Status of Office of the Chief Financial Officer (OCFO) Programs, Performance and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday March 4, 2002

2:00 p.m.—Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.—Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.—Affirmation session (Public Meeting) (If needed)

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on February 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on February 5, and on less than one week's notice to the public.

By a vote of 5–0 on February 5 and 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (1) private Fuel Storage (Independent Spent Fuel Storage installation) Docket No. 72–22; Review of LBP–01–37, (2) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Applicant's Petition for Interlocutory Review, (3) Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49), and (4) Duke Energy Corp. (McGuire Nuclear Station, Units 1&2; Catawba Nuclear Station, Units 1 & (2), LBP–02–04—Memorandum and Order Ruling on Standing and Contentions (Jan. 24, 2002)'' be held on February 6, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: February 7, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–3502 Filed 2–8–02; 12:17 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: February 4, 2002.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 67 FR 3743, January 25, 2002.

ADDITION: Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2001–3, Periodicals Ride-Along Experiment Extension.

At its meeting on February 4, 2002, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C.

William T. Johnstone,

Secretary.

[FR Doc. 02–3519 Filed 2–8–02; 2:02 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension ''Tell Us How We're Doing!'' SEC File No. 270–406; OMB Control No. 3235–0463.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title of the questionnaire is ''Tell Us How We're Doing!''

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Assistance (OIEA). The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are some of those investors who request assistance or information from OIEA. In 2001, for example, the number of investors who responded was 20, or about 5 percent.

The total reporting burden of the questionnaire in 2001 was approximately 5 hours. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (20 respondents × 15 minutes=5 hours).

Providing the information on the questionnaire is voluntary, and responses are kept confidential.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid Office of Management and Budget control number is displayed.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3345 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–15563]

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration on the American Stock Exchange LLC (IPI, Inc., Common Stock, $.01 Par Value)

February 5, 2002.

IPI, Inc., a Minnesota corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) hereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'')

The Issuer stated in its application that it has met the requirements of

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

Amex Rule l8 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

On January 15, 2002, the Board of Directors of the Issuer (''Board'') approved a resolution to withdraw the Issuer's Security from the Amex. On January 31, 2002, the Issuer held a special meeting of its shareholders to approve and adopt a plan of liquidation and dissolution of the Issuer that will authorize: (i) The sale of the assets of the Issuer and the distribution to shareholders pursuant to the plan; (ii) the deregistration of the Issuer's Security under the Act; and (iii) the dissolution of the Issuer pursuant to the Minnesota Business Corporation Act. The Board believes it advisable and in the best interest of the Issuer to withdraw its Security from listing and registration on the Amex in connection with the plan of liquidation and resolution.

Any interested person may, on or before February 28, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–3306 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 781(b).

[4] 15 U.S.C. 781(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45403; File No. SR–Amex–2001–100]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

February 6, 2002.

I. Introduction

On December 6, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* relating to the Exchange's initial listing fee, annual fee, the fee for listing additional shares and a one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.[3] The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.[4] The Exchange filed Amendment No. 3 to the proposed rule change on January 5, 2002.[5] The proposed rule change, as amended by Amendments Nos. 1 and 2, was published for comment in the **Federal Register** on January 10, 2002.[6] No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to amend sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* to modify initial and annual listing fees, fees for listing additional shares and the one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company.

Specifically, the Exchange proposes to amend section 140 of the *Company Guide* by increasing the original listing fees for stock issues, excluding securities listed under sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the *Company Guide.* The Exchange also proposes that the one time-charge of $5,000 for issuers who do not have a stock or warrant issue listed on the Exchange would now be designated an application processing fee. The original listing fee for Index Fund Shares (*e.g.,* iShares, VIPERs) listed under Rule 1000A and Trust Issued Receipts (*e.g.,* HOLDRs) listed under Rule 1200 is $5000 for each series, with no application processing fee.

The Exchange proposes to amend section 141 of the *Company Guide* by increasing annual fees for stock issues and for issues listed under sections 106 and 107 of the *Company Guide*. In addition, the Exchange proposes to codify an existing procedure in section 141 of the *Company Guide* to provide that the annual fee for Index Fund Shares and Trust Issued Receipts is based on the number of shares of a series outstanding at year-end, with multiple series aggregated for purposes of the fee calculation. Finally, the Exchange proposes that it would no longer reimburse issuers whose securities are removed from Exchange listing for part of any previously paid annual fee applicable to the portion of the year remaining after the date of suspension from dealings.

For issues over 100,000 shares, the Exchange proposes to amend section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

[4] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 (''Amendment No. 2''). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under section 141 as of January 1, 2002 and the revisions to sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under section 144.

[5] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Christopher Solgan, Law Clerk, Division, Commission, dated January 4, 2002 (''Amendment No. 3''). In Amendment No. 3, the Amex made a minor correction to the text of the proposed rule change. This is a technical amendment and is not subject to notice and comment.

[6] *See* Securities Exchange Act Release No. 45235 (January 4, 2002), 67 FR 1373.

142 of the *Company Guide* to increase the maximum fee per company for listing additional shares to $22,500 for issues of 1,125,000 shares or more. In addition, the Exchange proposes a maximum fee per company in any one year for listing additional shares of $45,000. Section 142(a) of the *Company Guide* would also be amended to make clear that section 142 fees apply to Amex securities admitted to unlisted trading privileges (*i.e.*, the relatively few Amex-traded issues grandfathered under section 12 of the Act[7] and not required to execute a listing agreement with the Exchange), comparable to the provision in section 141 of the *Company Guide* for annual fees.

The Exchange proposes to amend section 142(d) of the *Company Guide* (''Substitution Listing'') by raising the fee for listing of new substituted shares from $2,500 to $5,000, and raising the maximum fee for substituted shares and excess shares from $20,000 to $27,500 per quarter, (corresponding to the sum of the proposed $5,000 increase in maximum fees for listing additional shares under section 142(a) of the *Company Guide* and the $2,500 fee increase for listing new substituted shares).

The Exchange proposes to increase the service charge under section 144 of the *Company Guide* to $1,500 for applicants that withdraw their applications or for applications that are not approved. In addition the Exchange proposes to increase the minimum charge if an issuer cancels a listing authorization without issuing such authorized shares from $1,000 to $1,500.

Lastly, the Exchange proposes to amend section 341 of the *Company Guide* to increase the one-time charge imposed in connection with acquisition of a listed company by an unlisted company from $7,500 to $10,000.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that the Exchange has represented it incurs for services provided to issuers. As represented by the Exchange, it has incurred significantly increased regulatory and technology costs over the last several years. In addition, the Exchange stated that the proposed fee increases are necessary to adequately fund the Exchange's listed equities business and development of value-added services for Amex-listed companies and to allow it to relieve pressures on other revenue sources that have traditionally underwritten short falls in regulatory related fees.[11]

The Exchange seeks to implement the proposed annual fees set forth in section 141 of the *Company Guide* as of January 1, 2002. The Commission believes that it is reasonable for the Amex to implement these annual fee increases as of January 1, 2002. As noted above, the Exchange stated that it had incurred increased costs over the last several years and has not increased its annual fees for listing since 1993.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will permit the Exchange to implement the new annual fees as of January 1, 2002, and other fees as of the date of this Order, therefore allowing it to adequately fund its listed equities business and issuer services. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act[12] to approve the proposed rule change, as amended, on an accelerated basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2001–100), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3301 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78*l*.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Amendment No. 1, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45401; File No. SR–Amex–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 393 Relating to Section 31 Transaction Fees

February 6, 2002.

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 February 4, 2002, the American Stock Exchange LLC (''Amex'' 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. The Exchange filed the proposal 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.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 393 relating to transaction fees pursuant to section 31 of the Act.[6] The text of the proposed rule change is below. New text is in italics; deletions are in brackets.

Rule 393. Securities and Exchange Commission Transaction Fee

There shall be paid to the Exchange by each member or member organization in such manner and at such time as the Treasurer of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78ee.

Exchange shall direct, the *fees specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all* [sum of one cent for each $300 or fraction thereof of the dollar volume of the] sales upon the Exchange of securities *specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder* [(other than bonds, debentures, and other evidence of indebtedness or any security which the Commission may, by rule, exempt from the imposition of the fee) (whether or not cleared by a registered clearing agency) cleared by such member or member organization]. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the transaction fee imposed upon the Exchange by the provisions of the Securities Exchange Act of 1934.

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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act[7] has required the remittance of a fee to the Commission of 1/300 of one percent of the aggregate dollar amount of the sale of securities. Excluded from this requirement is the sale of any bonds, debentures, or other evidences of indebtedness and any sale or class of sales of securities that the Commission may, by rule, exempt from the imposition of this fee.

Congress recently passed the ''Investor and Capital Markets Relief Act'' (''ICMRA''), which amends section 31 of the Act. The ICMRA reduced the fee to $15 per $1 million of the aggregate dollar amount of the sale of securities. December 28, 2001 is the effective date for this new rate. The ICMRA provides that the Commission will, twice yearly, determine the amount of any changes in the fee.

Amex Rule 393, which references the previous fee of one cent for each $300 of dollar volume, is therefore being amended to conform it to Congress' recent amendment to section 31 of the Act. Thus, members and member organizations are required to pay to the Exchange whatever fees are specified pursuant to Section 31 of the Act and the rules thereunder.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Amex to immediately conform its rule to reflect the recent amendment to section 31 of the Act. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–07 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3302 Filed 2–11–02; 8:45 am]

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[7] 15 U.S.C. 78ee.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45394; File No. SR–CBOE–2001–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. 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 CBOE proposes to amend CBOE Rule 8.7 regarding AutoQuote parameters. The text of the proposed rule change is set forth below. Additions are in italics.

Chapter VIII: Market-Makers, Trading Crowds and Modified Trading Systems

Section A: Market-Makers

Rule 8.7 Obligations of Market Makers

(a)–(c) No change.

* * * Interpretations and Policies:

.01–.06 No change.

.07 (*a*) Market-Makers are expected to participate in and support Exchange-sponsored automated programs, or approved equivalents, including but not limited to the Retail Automatic Execution System and AutoQuote. *AutoQuote is the Exchange's electronic quotation system that automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. The formula for generating automatically updated market quotations requires the input of certain components including an option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying.*

(b) For those classes in which a DPM, LMM or SMM has been appointed, the responsibility to determine a formula for generating automatically updated market quotations is done by either the DPM pursuant to Rule 8.85(a)(x) or the LMM or SMM pursuant to Rule 8.15. The DPM, LMM or SMM may choose to use either the Exchange's AutoQuote system or a proprietary automated quotation updating systems to monitor and update market quotations. For those option classes in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee may appoint one or more market-makers in good standing with an appointment in the particular option class to determine a formula for generating automatically updated market quotations for a particular period of time using the Exchange's AutoQuote system or a proprietary automated quotation updating system.

(c) For those option classes in which a DPM, LMM, SMM, or appointed market-maker do not have the responsibility set forth in paragraph (b) above, the components in the formula used in each trading crowd to generate automatically updated market quotations shall be as agreed upon by the respective trading crowds. For those classes in which a DPM, LMM, or SMM, or a market-maker in good standing has been appointed the responsibility to determine a formula for generating automatically updated market quotations, the DPM, LMM, SMM or appointed market-maker may, but is not required to, consult with and/or agree with members of the trading crowd in setting the components of the formula, but the members of the trading crowd are not required to provide input in these decisions, and in all instances, the DPM, LMM, SSM, or appointed market-maker has the responsibility to make the final determination as to the components. The provisions of this Interpretation .07 shall also apply to the use of automated quotation updating systems to generate indicative prices that are indications of interest and not firm quotes.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is submitting the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[3] which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. * * *'' The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or Autoquote.[4]

Autoquote is the Exchange's electronic quotation system that automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. The formula for generating automatically updated market quotations requires the selection and input of the following components or variables: An option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying. These Autoquote components may need to be changed during the course of a trading day.

Autoquote is relied upon by all trading crowds to provide automatically updated quotations in options series traded by the crowd. Autoquote provides a means to update the quotes for the tens of thousands of series the Exchange lists.[5] The Commission has recognized ''the importance and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] For purposes of this filing and the proposed interpretation, the term Autoquote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMs, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own Autoquote system.

[5] Although Autoquote is necessary, individual market-makers can and do manually improve the quote themselves in order to gain a larger share of orders than competing market-makers. In these instances, the manual quote overrides the Autoquote for that particular series.

efficiencies of automated systems'' and that ''the Exchange must have the authority to require adequate levels of market maker participation if these systems are going to function efficiently and on a continuous basis.''[6]

The CBOE believes that automatic updating of quotes enabled by Autoquote is the bedrock for many of the Exchange's market maker obligations. For example, pursuant to CBOE Rule 8.51, the Exchange trading crowd as a whole is defined as the ''responsible broker or dealer'' for purposes of the Firm Quote Rule, and thus is obligated to execute a certain number of contracts at the disseminated quote. Accordingly, the CBOE believes that it is very important that the disseminated quote is updated and accurate. Similarly, market makers would not participate in the Exchange's Retail Automatic Execution System (''RAES'') if they did not have confidence in the accuracy of the price of orders executed on RAES.

The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would set forth a more thorough description of Autoquote. The proposed rule change also would identify who has responsibility under Exchange rules to determine a formula for generating automatically updated market quotations. For classes of options in which a DPM is appointed, the DPM would have primary responsibility to determine the formula, which includes determining the components or variables used in the Autoquote formula.[7] For classes of options in which an LMM or SMM is appointed, such as the S&P 100 option class (''OEX''), the LMM or SMM would have primary responsibility to determine the formula for generating automatically updated market quotations.[8] For classes of options in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee would be permitted to appoint one or more market makers in good standing with an appointment in the particular option class (''Appointed Market-Makers'') to determine a formula for generating automatically updated market quotations, using the Exchange's Autoquote system or a proprietary automated quotation updating system.

Although DPMs, LMMs, SMMs, and Appointed Market-Makers would have the responsibility for determining the formula for generating automatically updated market quotations, the proposed amendment to Interpretation and Policy .07 expressly would provide that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in setting the components or variables of the formula. Conversely, the proposal provides that to the extent a DPM, LMM, SMM, or Appointed Market-Maker determines to consult with and/or agree with the market makers in the trading crowd in setting the components of the Autoquote formula, members of the trading crowd would not be required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions.

For classes of options in which a DPM, LMM, SMM or Appointed Market-Maker does not have the responsibility to determine a formula for generating automatically updated market quotations, the market makers would be permitted to coordinate and agree upon the variables for the Autoquote formula. In some trading crowds, one or a few market makers may take responsibility (with the crowd's approval) for updating the Autoquote variables without seeking input on a continual basis. The CBOE believes that such market maker coordination is necessary and appropriate because an Autoquote system is centralized and applicable to all market participants. Thus, the obligations resulting from the quotes generated by Autoquote, such as the firm quote obligation, are imposed on the crowd as a whole.[9] Moreover, although Autoquote is essential to ensure that quotes are updated on the numerous series traded by the Exchange on a timely basis, individual market makers can and do compete among each other to gain a larger share of orders by verbalizing quotes that improve the Autoquote generated quotes. These verbalized quotes by market makers override the Autoquote generated quotes for the particular series that is the subject of the verbalized quote.

Finally, the amendment to Interpretation .07 also would provide that the provisions described above and set forth in the proposed amendment to Interpretation .07 would also apply to the use of automated quotation updating systems that generate indicative prices that are indications of interest and not firm quotes.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 5(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change is procompetitive, because it is necessary to provide for a fair and orderly market in the thousands of option series traded on the Exchange. Accordingly, the Exchange believes the limited joint activity described in this rule proposal is justified by and furthers the objectives of section 11A(a)(1)(C)(ii) of the Act[13] by assuring fair competition among markets. The proposed rule also is consistent with and furthers the objectives of section 6(b)(5) of the Act[14] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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.

[6] *See* Securities Exchange Act Release No. 25787 (June 6, 1988), 53 FR 22083, at 22084 (June 13, 1988).

[7] See CBOE Rule 8.85(a)(x).

[8] On December 17, 2001, the CBOE filed SR–CBOE–2001–63 which amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market Performance Committee (''MPC'') may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day in an options class for which a DPM has not been appointed.

[9] CBOE has always used, and the applicable CBOE rules envision, a centralized autoquote system. Although it may be technologically feasible at some point in the future to have a system that would permit each individual market-maker to have his or her own automatic quote updating capability (and although CBOE may eventually develop such a model), CBOE believes that its centralized autoquote system is essential to preserving CBOE's current model of a floor-based, open-outcry market that includes joint crowd obligations pursuant to rules that have been approved by the Commission.

[10] Interpretation and Policy .10 to CBOE Rule 8.7 provides that ''[m]arket-makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market.''

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[14] 15 U.S.C. 78f(b)(5).

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 CBOE 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–64 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3295 Filed 2–11–02; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45405; File No. SR–CSE–2001–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. Relating to the Creation of the OTC–UTP System on the Cincinnati Stock Exchange, Inc.

February 6, 2002.

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 October 31, 2001, the Cincinnati Stock Exchange, Inc. (''CSE'' 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. The Exchange filed an amendment to its proposal on February 5, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 11.9, National Securities Trading System (''NSTS''), to create a parallel trading system within the Exchange for Nasdaq/National Market securities (''Nasdaq securities''). The Over-the-Counter (''OTC'') Unlisted Trading Privileges (''UTP'') System (''OTC–UTP System''), while operating on CSE's current hardware and communication lines, will subject CSE users to altered Exchange rules that make the CSE's price/time and agency/principal priorities voluntary for Nasdaq securities. The CSE believes that the proposed rule change will enhance the competitive position of the Exchange by promoting increased liquidity and greater opportunities for members and their customers to obtain best execution on the CSE. The text of the proposed rule change is available at the principal offices of the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission (February 5, 2002) (''Amendment No. 1'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its rules to create the OTC–UTP System within the CSE that will provide CSE members with increased flexibility to provide best execution to their customers' orders. In order to more effectively compete for order flow in Nasdaq securities, CSE is proposing to amend its price/time and agency/principal priority rules such that CSE users (''Users'')[4] may voluntarily and on an order-by-order basis determine to interact with other bids, offers, and orders displayed in CSE's OTC–UTP System. CSE believes that the new trading system is consistent with the federal securities laws and similar in nature to that currently employed by the Nasdaq Stock Market, Inc. (''Nasdaq'') and as proposed in the Nasdaq's exchange filing.[5]

Description

The CSE's current trading system, NSTS, is an electronic securities communication and execution facility, that combines the display of bids, offers, and orders of Users as well as orders on the NSTS central limit order book (''CLOB'') with the matching and execution of like-priced orders, bids, and offers according to programmed price/time and agency/principal priorities.[6] The price/time and agency/principal priority rules are set forth in CSE Rules 11.9(i), (l), (m), and (u).

Rule 11.9(i) states that NSTS shall automatically match and execute like-priced orders, bids and offers in accordance with the price/time and agency/principal priorities set forth in

[4] CSE Rule 11.9(a)(7) defines the term ''User'' as a Member of the Exchange or an Approved Dealer.

[5] *See* Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[6] CSE Rule 11.9(a)(1).

Rules 11.9(l) and (m).[7] Rule 11.9(l) provides that public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers on NSTS at the same price. In addition, Rule 11.9(l) imposes price/time priority on all bids and offers, except those executed pursuant to Rule 11.9(u), such that the first in line at the best price shall be executed.[8]

Rule 11.9(m) requires that each Approved Dealer[9] or other Proprietary Member[10] when trading on the exchange for its own account or as agent for professional agency orders[11] yield priority to (1) All public agency orders in the CLOB at prices equal to, or better than, the Dealer's order, bid, or offer; and (2) all orders, bids, and offers of an Approved Dealer or other Proprietary Member for its own accounts or as agent for professional agency orders entered in NSTS (i) at an earlier time than the Dealer's order, bid, or offer, or (ii) in the case of Approved Dealers when trading for their own account against public agency orders they represent as agent pursuant to Rule 11.9(u).

Rule 11.9(u), ''Preferencing Rule,'' permits orders to be preferenced to particular Approved Dealers and executed at the same price as current Approved Dealer bids, offers, and professional agency displayed orders without regard to the time priority of such bids, offers, and displayed orders.[12]

To accommodate the introduction of the OTC–UTP System, CSE is amending the above rules, where necessary, to clarify that the price/time and agency/principal priorities are voluntary with respect to trading in Nasdaq securities. For example, subparagraph (2) will be added to Rule 11.9(i) to provide that ''the OTC–UTP System will match and execute like-priced orders, bids, and offers when specifically instructed by the CSE Users. Subject to the obligations of Rule 12.10, Best Execution, Users may choose to execute like-priced orders without regard to the price/time and agency/principal priorities set forth in Rules 11.9(l) and (m).''[13] Similarly, Rule 11.9(l) will be amended to state that ''Public Agency orders, except in Nasdaq/NM securities traded through the OTC–UTP System, * * * shall have priority. * * *''[14]

In addition, the CSE system algorithms that enforce the price/time and agency/principal priority rules will be modified to comply with the voluntary order interaction of the OTC–UTP System. However, Rule 12.6, Customer Priority, which is CSE's ''Manning'' rule will not be amended and will continue to be enforced as written on CSE Designated Dealers.

Discussion

CSE's Preferencing Rule (Rule 11.9(u)) was a step towards creating a more competitive environment for exchange-listed securities traded on a UTP basis on the CSE. By adopting a rule that permits CSE dealers to execute customer orders without regard to the time priority of other CSE dealer orders, bids, and offers, the CSE introduced elements of a dealer market, such as Nasdaq, into its exchange structure. In approving preferencing on CSE, the Commission recognized that, ''the CSE combines the features of both exchange and over-the-counter markets.''[15] Further, the Commission stated that:

> [t]hus, the NSTS system provides a central location for CSE dealers to interact in a manner similar to a traditional exchange trading floor. Preferencing, however, suspends time priority between professional trading interest so that the multiple CSE dealers can execute their own customer orders without interruption by other dealers and is more akin to trading in the over-the-counter markets.[16]

While the Commission was cautious in supporting preferencing at its inception, CSE has proven that the quality of executions pursuant to the Preferencing Rule are equal to, and often exceed, the quality of executions on the primary markets for exchange-listed securities. As the data published pursuant to Rule 11Ac1–5 demonstrates, CSE execution quality consistently exceeds that of the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC, the two primary listed markets. Indeed, CSE numbers are better than those of the NYSE in such categories as effective spread, execution speed, and percent of executions outside the quoted market. Clearly, eliminating time priority among CSE dealers has benefited CSE customers through better prices and faster service.

CSE now seeks to expand on these benefits by introducing the OTC-UTP System, which makes price/time and agency/principal priorities for bids, offers, and orders in Nasdaq securities voluntary among CSE market participants. The CSE believes that such an open architecture is necessary to attract liquidity from various market participants, including dealers, order-entry firms, ECNs, ATSs, and public customers. As greater liquidity is introduced into CSE, the competitive efficiencies of this open structure will generate greater opportunities for order interaction as well as faster and cheaper executions for public customers. In summarizing the congressional intent of section 11A of the Act, the Commission stated in its Concept Release on Issues Relating to Market Fragmentation that

> Investor interests are best served by a market structure that, to the greatest extent possible, maintains the benefits of both an opportunity for interaction of all buying and selling interest in individual securities and fair competition among all types of market centers seeking to provide a forum for the execution of securities transactions.[17]

The CSE believes that the freely competitive nature of the OTC-UTP System will attract new CSE Users and greater liquidity to the Exchange. As liquidity begets liquidity, order interaction increases and investors are better served. Once the algorithmic controls are removed and replaced by the voluntary—to the extent that volition is constrained by the duty of best execution—interaction of bids, offers, and orders, the CSE believes that its quote driven market will be on a level playing field with Nasdaq and an era of true price competition in Nasdaq securities may begin. By combining fair competition with opportunities for increased order interaction, the CSE believes it has proposed a mechanism to achieve the goals of section 11A of the Act.

As the Commission is aware, Nasdaq members trade without regard to price and time priority and intend to do so

[7] *See* CSE Rule 11.9(i).

[8] *See* CSE Rule 11.9(l).

[9] CSE Rule 11.9(a)(4) defines ''Approved Dealer'' as a Designated Dealer, a Contributing Dealer, or a specialist or market maker registered as such with another exchange or national securities association with respect to any Designated Issue.

[10] Article I, Section 1(k) of CSE By-Laws defines ''Proprietary Member'' as a person who was a ''regular member'' prior to the effective date of these By-Laws or a person who, pursuant to the provisions of Article II of these By-Laws, has applied for, and been admitted to, membership as a proprietary member subsequent to the effective date of these By-Laws.

[11] CSE Rule 11.9(a)(10) defines ''professional agency order'' as an order entered by a User as agent for the account of a broker-dealer, a futures commission merchant, or a member of a contract market.

[12] *See* CSE Rule 11.9(u).

[13] *See* Proposed Rule 11.9(i)(2). The CSE notes that with regard to matched like-priced orders delivered to CSE by Users, such like-priced orders are executed on CSE's OTC–UTP System at the moment in time (as captured by the User's system time stamp) that the matched like-priced orders are sent to CSE.

[14] *See* Proposed Rule 11.9(l).

[15] *See* Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996).

[16] *Id.*

[17] *See* Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2001) (emphasis added).

when Nasdaq becomes an exchange. Nasdaq market makers may execute customer orders without regard to other Nasdaq bids, offers, displayed customer orders, and without being executed through a Nasdaq system. Nasdaq believes that its model promotes competition among various market participants while balancing the fundamental values necessary for the protection of investors. As stated by Nasdaq, ''[i]n the real world of investor needs, price is not a simple issue. In most cases, size and immediacy are also a consideration, and the most efficient execution may not take place at the inside.''[18]

The Commission affirmed this model in its recent approval of Nasdaq's SuperMontage system.[19] SuperMontage is a Nasdaq system that provides for the enhanced display of quotes and orders combined with certain execution functionalities based upon multiple priority algorithms. Nasdaq believes that SuperMontage, ''advances the fairness and efficiency of the handling of individual limit orders—without inhibiting the creativity of the competitive marketplace which serves the interests of all investors.''[20] Nasdaq preserves its creativity by making SuperMontage voluntary. Nasdaq market makers holding customer orders do not have to place them into the SuperMontage order facility and may execute such orders at any price and at any time without regard to the time and price algorithms of SuperMontage (subject, of course, to the obligations of providing best execution).

In approving SuperMontage, the Commission noted that

> Today most orders in Nasdaq securities are executed directly between Nasdaq participants, not using Nasdaq systems. No price/time priority rules apply to this trading, other than a market maker's duty to protect its customer limit orders before trading as principal. While price priority is generally honored as a market principle in executing orders outside of Nasdaq's systems, time priority is not accorded to quotes in this trading. Even after SuperMontage is implemented, many orders probably will be executed outside of SuperMontage free from time priorities.[21]

According to the NASD, only 26 percent of share volume and 36 percent of trades in Nasdaq are executed using SOES and SelectNet.[22] This leaves approximately 70 percent of Nasdaq volume to be executed outside any price and time priority rules. The Commission has stated that, ''[i]t is unlikely that market makers will enter customer market orders into SuperMontage rather than simply internalizing them directly.''[23]

The question then is whether Nasdaq's exchange status, if approved, should require Nasdaq to change its general lack of price and time priority. Nasdaq certainly believes that no change is necessary. Nasdaq's proposed exchange rules do not create any price or time priorities separate and apart from the voluntary provisions of SuperMontage. The Commission, in publishing notice of Nasdaq's application for registration as an exchange, raised certain implications related to Nasdaq's separation from the NASD and its application to be an exchange.[24] While this list of implications likely was not intended to be exhaustive, the Commission did not raise whether Nasdaq should be required to impose price and time priority in order to become an exchange.

The CSE, however, brought this matter before the Commission in its comment letter on Nasdaq's exchange application.[25] The CSE emphasized that a competitive response to Nasdaq would be necessary. In filing its exchange rules without providing for general price/time priority and mandatory centralization of order interaction, Nasdaq apparently believes that the Commission will approve Nasdaq's decentralized market model. Similarly, the CSE is proposing its OTC–UTP System because CSE believes that its proposed market structure is both consistent with the federal securities laws and promotes competition and efficient execution practices for the ultimate benefit of public investors.

Regulatory Oversight

The Exchange will oversee the OTC–UTP System in the same manner and using the same techniques as used for trading through NSTS. Given the significance of Rule 12.10, Best Execution, in the operation of the OTC–UTP System, however, the Exchange is designing new automated exception reports to track unusual trading activity that may indicate a failure to provide best execution. The unusual trading activity review will include, but not be limited to, a review of trades at prices inferior to preexisting bids, offers, and orders, particularly, trades inferior to public agency orders on the CLOB. The surveillance procedures should reduce the possibility of inadvertent mishandling of orders and should detect trading abuses that may be related to a denial of best execution. In addition, these regulatory measures should induce Users to generally honor price priority across all bids, offers, and orders, on the CSE, and thereby increase the likelihood of order interaction on the CSE.

The Regulatory Staff also will include in its annual examination of members a review of order handling and execution practices in light of the daily exception reports generated by the Exchange. The Exchange believes that its proposed regulatory measures exceed those applied by NASD Regulation to trading on Nasdaq and should assure the Commission that trading activity related to the OTC–UTP System will be performed in accordance with the just and equitable principles of trade as required by the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[26] in general, and section 6(b)(5) of the Act,[27] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.[28]

[18] *See* letter from Richard Ketchum, President, NASD to Jonathan G. Katz, Secretary, Commission (May 22, 2000) (''Market Fragmentation Letter'').

[19] *See* Exchange Act Release No. 43514 (November 3, 2000), 65 FR 69084 (November 15, 2000) (''SuperMontage Order'').

[20] *See* Market Fragmentation Letter, *supra* note 18.

[21] *See* SuperMontage Order, *supra* note 19.

[22] *Id.*, at Note 222.

[23] *Id.*, at 26.

[24] *Supra* note 5 at 31953.

[25] *See* letter from Jeffrey T. Brown, General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (August 28, 2001).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The Commission received a comment letter from the Nasdaq and a response to the letter from the CSE. Both letters are available in the Commission's Public Reference Room. *See* letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, Commission (January 9, 2002) and letter from Jeffrey T. Brown, Senior Vice

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2001–04 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3297 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45406; File No. SR–CSE–2002–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Establishing a Fee Schedule for Nasdaq National Market Securities Transactions and Establishing a Revenue Sharing Program for Trading in Nasdaq National Market Securities

February 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 25, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' 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 CSE.[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

The Exchange proposes to amend the Exchange's rules to establish a fee schedule for transactions in Nasdaq National Market securities (''Nasdaq NM Securities'') and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is available at the principal offices of the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and the 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. CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The CSE withdrew SR-CSE–2001–05 and replaced it with SR–CSE–2002–01 by letter. *See* letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 25, 2002).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two amendments to the Exchange rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry.

The first amendment adds subsection (2) to CSE Rule 11.10(A)(e), (''Crosses and Meets''). Proposed subsection (2) establishes a fee schedule for transactions in Nasdaq NM Securities.

The second amendment creates an incentive for CSE members to trade Nasdaq NM Securities on the Exchange and will be codified as CSE Rule 11.10(A)(l) (''Tape 'C' Transaction Credit''). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to CSE members trading Nasdaq NM Securities. Under the Nasdaq program,[4] CSE member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by CSE member trading of Nasdaq NM Securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[5] generally, and section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act[7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] Nasdaq NM Securities will be traded on CSE pursuant to section 12(f) of the Act as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq-UTP Plan'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.[8]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(2) thereunder,[10] as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE–2002–01 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3299 Filed 2–11–02; 8:45 am]

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[8] The Commission received a comment letter from the Nasdaq and a response to the letter from the CSE. Both letters are available in the Commission's Public Reference Room. *See* letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, Commission (January 9, 2002) and letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(2).

[11] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45361; File No. SR–MSRB–2002–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–17, on Disclosure of Material Facts

January 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2002 the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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

Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts

Rule G–17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers[3] not to engage in deceptive, dishonest, or unfair practices. This first prong of rule G–17 is essentially an antifraud prohibition.

Second, the rule imposes a duty to deal fairly. Statements in the MSRB's filing for approval of rule G–17 and the Commission's order approving the rule note that rule G–17 was implemented to establish a minimum standard of fair conduct by dealers in municipal securities. In addition to the basic antifraud prohibitions in the rule, the duty to ''deal fairly'' is intended to ''refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets.''[4] As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[5] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G–17 was adopted many years prior to the adoption of the Exchange Act's Rule 15c2–12. The development of the NRMSIR system,[6] the MSRB's Municipal Securities Information Library® (MSIL®) system[7] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''dealer'' is used in this interpretive notice as shorthand for ''broker,'' ''dealer'' or ''municipal securities dealer,'' as those terms are defined in the Exchange Act. The use of the term in this interpretive notice does not imply that the entity is necessarily taking a principal position in a municipal security.

[4] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).

[5] *See e.g.,* Rule G–17 Interpretation—Educational Notice on Bonds Subject to ''Detachable'' Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129–130. The Commission described material facts as those ''facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision.'' *Municipal Securities Disclosure,* Exchange Act Release No. 26100 (Sept. 22, 1988) (the ''1988 SEC Release'') 53 FR 37778 at note 76, quoting *In re Walston & Co. Inc., and Harrington,* Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc. v. Northway, Inc.,* 426 U.S. 438 (1976).

[6] For purposes of this notice, the ''NRMSIR system'' refers to the disclosure dissemination system adopted by the Commission in Rule 15c2–12. Under Rule 15c2–12, as adopted in 1989, participating underwriters provide a copy of the final official statement to a NRMSIR to reduce their obligation to provide a final official statement to customers. In the 1994 amendments to Rule 15c2–12, the Commission determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings must be delivered to each NRMSIR and to the State Information Depository (''SID'') in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2–12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.

[7] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB rule G–36, as well as certain secondary market material event disclosures provided by issuers under Rule 15c2–12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.

Transaction Reporting System (''TRS''),[8] rating agencies and indicative data sources in the post-Rule 15c2–12 era have created much more readily available information sources. Recently, the market has made progress and market professionals (including institutional investors) can, and do, go to these industry sources to find securities descriptive information, official statements, rating agency ratings and reports, and ongoing disclosure information. These developments suggest a need for further explanation of what ''disclosure of all material facts'' means in today's market.

Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal securities transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources'').[9]

The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured ''triple-A'' rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example, because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.

With respect to primary offerings of municipal securities, the Commission has noted, ''By participating in an offering, an underwriter makes an implied recommendation about the securities.'' The Commission stated, ''This recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.''[10] Similarly, if a dealer recommends a secondary market municipal securities transaction, rule G–19 requires a dealer to ''have reasonable grounds for the recommendation in light of information available from the issuer or otherwise.''[11] If this ''reasonable basis'' suitability cannot be obtained from the established industry sources, then further review may be necessary before making a recommendation. To the extent that such review elicits material information that would not have become known through a review of established industry sources, dealers recommending transactions would be obligated to disclose such information in addition to information available from established industry sources.

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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

In May 2000, the MSRB-hosted a roundtable discussion about the use of electronic trading systems in the municipal securities market. Industry discussion at the roundtable, as well as subsequent comments, made it apparent that the municipal securities market, like the equity market, is in the process of developing alternative models of trading relationships between dealers and customers.

Based on the comments from the industry as well as the MSRB's review of market developments, the MSRB concluded that in order for innovation to occur, the industry needed interpretive guidance on the application of certain rules to these new trading methodologies. Alternative trading systems present the most graphic example of changing dealer/customer relationships and consequent need for regulatory change, but the changing relationships are not necessarily limited to electronic trading venues.

The MSRB proposed the original sophisticated market professional (''SMP'') concept in guidance that was published for comment in September 2000 (''2000 Notice'') to illustrate how different fair practice rules would operate when dealers were transacting with sufficiently sophisticated market professionals. When the 2000 Notice was released for comment, several institutional investors raised concerns about the appropriateness of the guidance in light of the municipal securities disclosure regime. For example, investors asserted that the duty of a dealer to disclose all material information under rule G–17 is necessary because it cannot be presumed that an investor, however sophisticated, has access to all information that has been gathered by or is available to a dealer. Investors also noted that, like retail investors, institutional investors struggle to get the necessary disclosures in the municipal securities market and that a dealer, by virtue of its relationship with the issuer, may possess information that is material but unavailable to the investor on a timely basis.

The MSRB believes that these concerns are valid, but that they overstate the scope of a dealer's rule G–17 obligations. In order to attempt to alleviate investors' concerns about the SMMP concept's application to rule G–17, the new rule G–17 interpretive notice includes an expanded explanation of what rule G–17's

[8] The MSRB's TRS collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.

[9] Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under Rule G–17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

[10] 1988 SEC Release at text following note 70. The Commission also stated that an underwriter must review the issuer's disclosure documents for possible inaccuracies and omissions. In the case of a negotiated offering, the Commission expects the underwriter to make an inquiry into the key representations included in the disclosure materials. In the case of a competitive offering, the Commission acknowledges that the underwriter may have more limited opportunities to undertake such a review and investigation but nonetheless is obligated to take appropriate actions under the particular facts and circumstances of such offering.

[11] *See e.g.,* Rule G–19 Interpretation'Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985 *MSRB Rule Book* (July 2001) at 134; *In re F.J. Kaufman and Company of Virginia,* 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (discussing ''reasonable basis'' suitability).

obligation to ''disclose all material facts'' means in today's market.

Investors' comment letters suggest that they have interpreted rule G–17's affirmative disclosure obligations too broadly by implying that a dealer always has an obligation to ''acquire'' all material information about a municipal security before effecting a customer transaction. Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources''). In other words, if a material fact is known by the dealer or available from an established industry source and the dealer did not disclose such fact to its customer, then the dealer could be found to have violated rule G–17.[12]

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with this standard in that it will clarify that a dealer's general obligations to provide disclosure about a municipal security is viewed within the context of reasonably available information about the municipal security and the dealer's actual knowledge of the municipal security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On July 6, 2001, the MSRB published a Notice and Draft Interpretive Guidance concerning two related topics (''2001 Notice'').[13] The first notice concerns rule G–17 and the disclosure of material facts. The second concerns sophisticated municipal market professionals. The MSRB invited public comments on all aspects of the 2001 Notice.[14] In response to the 2001 Notice, the MSRB received eight comment letters.[15] Four of those comment letters addressed the Rule G–17 Notice.[16] The comment letters ask for some modification to the rule G–17 interpretation, but in general seemed to ''welcome and concur with the MSRB's statements regarding a dealer's obligations to ''disclose all material facts'' in the context of today's evolving trading environment.''[17] After reviewing the comment letters, the MSRB approved the revised rule G–17 interpretive notice, with certain modifications and additions, for filing with the Commission.

Established Industry Sources

Comments Received. All four of the comment letters received suggest that the MSRB should not identify specific repositories of information as ''established industry sources.''[18] TBMA states that '' 'established industry sources' change frequently—especially now, as issuer websites and other technological advances are making new information sources available to our industry on a daily basis.''

MSRB Response. By using the term ''established industry sources,'' the MSRB intended to alert dealers to the sources of material information that are considered reasonably accessible to dealers engaging in municipal securities transactions. The definition identifies the basic sources for material information concerning municipal securities and recognizes that for some securities there may be other sources of information relating to the municipal securities transaction that are generally used by dealers that effect transactions in the type of security at issue.

While the MSRB is hopeful that technological advances will develop new sources of municipal securities information, the MSRB believes that the sources listed as established industry sources remain the predominant public sources of municipal securities information. Moreover, the definition of ''established industry sources'' was deliberately drafted to include additional sources that may be developed for certain securities. Likewise, if any of the listed sources of information become less relevant to the market in the future, the MSRB can make specific note of it at that time.

Raising the Standard of Care

Comments Received. MuniCenter's letter suggests that the MSRB is ''raising the standard of care'' for dealers and states that they doubt ''that broker-

[12] Concurrently with this filing, the MSRB is filing with the Commission an interpretive notice regarding dealers' obligations when effecting transactions for sophisticated municipal market professionals (''SMMPs''). *See infra* note 13 and Filing No. SR–MSRB–2002–02. Once the SMMP notice is approved, dealers who effect non-recommended secondary market transactions for SMMP customers will not be obligated to affirmatively disclose the information available from established industry sources to their SMMP customers. However, as in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

[13] ''Notice and Draft Interpretive Guidance on Rule G–17—Disclosure of Material Facts and Interpretive Guidance Concerning Sophisticated Municipal Market Professionals,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 3, attached to the filing application as Exhibit 2.

[14] The 2001 Notice was a revision to guidance that was published in September 2000 (''the 2000 Notice''). The 2000 Notice, which related only to the SMP guidance, received 17 comment letters that were considered prior to publishing the 2001 Notice. Concurrently with this rule G–17 filing the MSRB is filing its SMMP guidance with the Commission for approval. A discussion of the 2000 Notice and the comment letters received in response thereto is included in the MSRB's SMMP filing, which has been filed as File No. SR–MSRB–2002–02.

[15] Letter from Linda L. Rittenhouse, Staff, Association for Investment Management and Research Advocacy, to Carolyn Walsh, dated October 19, 2001 (''AIMR''); letter from David C. Witcomb, Jr., Vice President, Compliance Department, Charles Schwab & Co., Inc., to Carolyn Walsh, dated October 11, 2001 (''Schwab''); letter from Michael J. Marx, Vice Chairman, First Southwest Company, to Carolyn Walsh, dated October 12, 2001 (''First Southwest''); letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Carolyn Walsh, dated October 19, 2001 (''ICI''); letter from Alan Polsky, Chairman, National Federation of Municipal Analysts, to Carolyn Walsh, dated November 13, 2001 (''NFMA''); letter from Roger G. Hayes, Chair, The Bond Market Association Municipal Securities Division E—Commerce Task Force, to Carolyn Walsh, dated October 10, 20001 (''TBMA''); letter from Thomas S. Vales, Chief Executive Officer, TheMuniCenter, to Carolyn Walsh, dated October 1, 2001 (''MuniCenter''); and letter from David Levy, Sr. Associate General Counsel, First Vice President, UBS Paine Webber Inc., to Carolyn Walsh, dated October 19, 2001 (''UBSPW'').

[16] *See* First Southwest, MuniCenter, TBMA, and UBSPW, *supra* note 15.

[17] UBSPW, *supra* note 15.

[18] First Southwest, MuniCenter, TBMA, and UBSPW, *supra* note 15.

dealers operating in the traditional marketplace, effecting a municipal transaction that does not involve making a recommendation, have interpreted fair dealing rules to require that they discover and disclose information from specified sources.'' [19]

MSRB Response. The rule G–17 interpretive notice does not raise the standard of care required by dealers in non-recommended transactions with customers. The existing interpretive statement on rule G–17 can be construed, on its face, to obligate dealers to disclose all material information about a municipal security transaction, without regard to how accessible the information is to the dealer. The proposed rule change makes clear that the obligation of the dealer to disclose all material information is limited to such information that is reasonably accessible.

The MSRB recognizes that at times dealers may have difficulty ensuring that they have taken into account all material information available from established industry sources when disclosing material information to customers. The MSRB has been working with the industry to improve dealers' ability to access all material information concerning municipal securities transactions so that dealers can better meet their regulatory responsibilities. However, given that the disclosure system is currently not as accessible to most customers as it is to dealers, the MSRB continues to believe that dealers must be responsible for disclosing information available from established industry sources to customers.[20]

Providing Electronic Access

Comments Received. MuniCenter is concerned that an obligation to disclose is ''susceptible to an interpretation that the broker-dealer must actually deliver or otherwise communicate all material facts derived from established industry sources.'' [21] MuniCenter states that it believes that providing electronic access to information is consistent with the obligation to disclose information and would like confirmation of that view by the MSRB.

MSRB Response. The MSRB does not believe it would be appropriate for it to issue a blanket statement to the effect that providing electronic access to information always fulfills a dealer's obligation to disclose this information to a customer. Nevertheless, the MSRB believes that under appropriate facts and circumstances (*e.g.,* the dealer is not shifting the cost of acquiring the information to the customer, the link is prominent and functioning and the link provides information that is comprehensible to the customer) providing electronic access to information is consistent with the dealer's disclosure obligation. Therefore, the MSRB has added a statement to the rule G–17 interpretive notice to the effect that the MSRB believes that the provision of electronic information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose information, but whether such access constitutes effective disclosure ultimately depends upon the particular facts and circumstances present.

[19] MuniCenter, *supra* note 15.

[20] The MSRB's proposed SMMP interpretive notice acknowledges that certain customers (*i.e.,* SMMPs) have access to established industry sources and would allow dealers to effect non-recommended secondary market transactions with SMMPs without making the affirmative disclosures required under rule G–17. *See* File No. S–MSRB–2002–02.

[21] MuniCenter, *supra* note 15.

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 self-regulatory organization 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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–01 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3298 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45404; File No. SR–NYSE–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 351 Concerning the Reporting of Criminal Offenses by Members and Member Organizations to the Exchange

February 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 9, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 351 that would narrow the scope of reportable criminal offenses reported by members and member organizations to incidents, which are more germane to the conduct of a securities-related business and would, therefore, minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. Moreover, the proposed amendment would capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

disqualification under section 3(a)(39) of the Act.[3]

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Reporting Requirements

Rule 351

(a) (1)—(4) no change.

(a) (5) is arrested, arraigned, indicted or convicted of, or pleads guilty to, pleads no contest to, [any criminal offense (other than minor traffic violations)] *any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity in a domestic or foreign court.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend NYSE Rule 351(a)(5) with respect to the reporting of criminal offenses by members and member organizations to the Exchange. According to the Exchange, one of its objectives, as provided by the Exchange's Constitution, is to ''maintain high standards of commercial honor and integrity among its members, allied members, member firms and member corporations.* * *'' To this end, NYSE Rule 351(a)(5) requires that members and member organizations promptly report to the Exchange whenever a member, member organization, or any member, allied member or registered or non-registered employee associated with such member or member organization is arrested, arraigned, indicted, convicted of, pleads guilty to or pleads no contest to, any criminal offense (other than a minor traffic violation).

According to the Exchange, the reporting requirement under NYSE Rule 351(a)(5) is intended to assist it ensure that its members, allied members and member organizations possess commercial integrity and can function in a fiduciary capacity. However, the Exchange believes that the definition of a reportable offense under NYSE Rule 351(a)(5) is too broad in its current form and departs from the prevailing industry disclosure requirements.[4] The Exchange states that it has required member organizations to report a wide range of criminal offenses to the Exchange. In fact, the Exchange believes that the majority of offenses currently reported to the Exchange do not relate to the commercial integrity of the industry. The Exchange states that such reported offences are not business-related, such as fraud, embezzlement, theft or forgery. More often, the Exchange states, the reported offences relate to violations of the motor vehicle code, such as drunk driving offenses.

As a result, the Exchange believes the overly broad reference to ''criminal offense'' under NYSE Rule 351(a)(5) currently requires applicants to report information that is of no regulatory interest to the Exchange, is not in keeping with other industry regulatory requirements and places unnecessary demands on Exchange staff since they have been required to review these unnecessary filings. For example, the Exchange asserts that 95% of the 154 reported arrests in the first quarter of 2001 were not felonies or business-related offenses. In fact, 50% of the reported arrests involved drunk driving offenses. Under the proposed amendment, the Exchange states that these types of arrests would not need to be reported to the Exchange.

According to the Exchange, the proposed rule change would narrow the scope of reportable criminal offenses required by members and member organizations to incidents, which are more germane to the conduct of a securities-related business and would, therefore, minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. However, the Exchange notes that the proposed rule change would still require that every felony be reported to the Exchange, while only the proposed enumerated misdemeanors need be reported.[5] Moreover, the Exchange believes that the proposed rule change would capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39)[6] of the Act.

(2) Statutory Basis

The Exchange believes the basis for the proposed rule change, as amended, is the requirement under sections 6(b)(5)[7] and 6(c)(2) of the Act.[8] Section 6(b)(5)[9] requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. Section 6(c)(2)[10] permits an exchange to deny membership to a registered broker-dealer or bar association of a natural person with a registered broker-dealer who is subject to a statutory disqualification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition 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

Comments were neither solicited nor received by the Exchange.

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)

[3] 15 U.S.C. 78c(a)(39).

[4] Under the current version of the Form U–4, Question 22A(1) reads as follows: ''Have you ever (a) been convicted of or pled guilty or nolo contendere (''no contest'') in a domestic, foreign, or military court to any felony? (b) been charged with any felony?' Question 22B(1) reads as follows: Have you ever (a) been convicted of or pled guilty or nolo contendere (''no contest'') in a domestic or foreign court to a misdemeanor involving: investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion, or a conspiracy to commit any of these offenses? (b) been charged with a misdemeanor specified in 23B(1)(a)?

[5] Telephone conversation between Susan Light, Vice President, NYSE, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2002.

[6] 15 U.S.C. 78c(a)(39).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(2).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c)(2).

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–06 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3300 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45392; File No. SR–PCX–2001–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 PCX is proposing to adopt rules pertaining to collective actions of options market makers that may be made in determining spreads or prices in particular option series. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

¶4935 Obligations of Market Makers

Rule 6.37(a)–(c)—No change.

(d)—[Reserved][3]

(e) Prohibited Practices and Procedures.

(1) Any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.

(2) [Reserved]

(f) Notwithstanding the prohibitions set forth in Subsection (e), the LMM and members of the trading crowd are permitted to act collectively as set forth below:

(1) The LMM may receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd are not required to provide input to the LMM on any of these variables. Notwithstanding any input that the members of the trading crowd may have provided with regard to these variables, it is within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems; provided, however, that LMMs may disclose the variables themselves pursuant to Rule 6.82(c)(8).

(2) The obligation of Market Makers to make competitive markets does not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. For purposes of this rule, a large order is an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to Rule 6.87.

(3) In conjunction with their obligations as a responsible broker or dealer pursuant to Rule 6.86 and SEC Rule 11Ac1–1, the LMM and Market Makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to Rule 6.86(c).

Lead Market Makers

Rule 6.82(a)–(b)—No change.

(c) Obligations of Lead Market Makers:

Each LMM must meet the following obligations:

(1)–(7)—No change

(8) LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. The LMM may disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).

[(8)–(13)]– *(9)–(14)*—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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed Rule 6.37(d) is pending SEC approval. *See* File No. SR–PCX–99–13.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 (''Obligation of Market Makers'') by adding a new subsection (e) to be entitled, ''Prohibited Practices and Procedures.'' Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.

The Exchange is also proposing to adopt new PCX Rule 6.37(f), which would provide that notwithstanding the prohibitions set forth in Subsection (e), the Lead Market Maker (''LMM'') and members of the trading crowd are permitted to act collectively as set forth in subsection (1) through (3) of proposed PCX Rule 6.37(f).

Subsection (1) to proposed PCX Rule 6.37(f) would permit the LMM to receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd would not be required to provide input to the LMM on any of these variables. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would further state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems; provided, however, that LMMs would be permitted to disclose the variables themselves pursuant to proposed PCX Rule 6.82(c)(8). The Exchange believes such input into autoquote variables helps to assure the quality of the Exchange's markets. An LMM may have a variable set erroneously or may have failed to update a variable in response to new information. The Exchange believes that the proposed rule change would allow such errors to be rectified promptly.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1,[5] the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 (''Obligations of Lead Market Makers'') by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).

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 Section 6(b)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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 PCX 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–50 and should be submitted by March 5, 2002.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] 17 CFR 240.11Ac1–1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3296 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45395; File No. SR–PCX–2001–33]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1, To Adopt Procedures for the Transfer of Options Positions

February 5, 2002.

On August 10, 2001, the Pacific Exchange, Inc. (''PCX'') 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 adopt procedures for the transfer of options positions. On December 11, 2001, the Exchange amended the proposal to: (1) Clarify the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revise Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) make technical changes to the rule text.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it establishes which position transfers may occur off the floor and which position transfers must be offered to the floor, and the procedures for effecting such transfers. The Commission believes differentiating between on floor and off floor position transfers and clearly delineating the procedures for effecting such transfers, will aid in the orderly transfer of option positions which should help to perfect the mechanism of a free and open market and a national market system, and further the public interest.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–33), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3304 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission and attachments (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45188 (December 21, 2001), 66 FR 67606.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission also notes that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A, which the Commission approved on December 28, 1995. *See* Securities Exchange Act Release No. 36647, 61 FR 566 (January 8, 1996).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45396; File No. SR–PCX–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

February 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation'') 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 PCXE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCXE, proposes to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of $2,500 in connection with their appeal of the Corporation's decision to delist a security. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCXE Rule 5.5(m) provides the procedures with which the Corporation complies in determining to delist a security for other than routine reasons (such as redemptions, maturities, etc.). In order to determine whether the security meets the maintenance criteria, the Corporation relies upon the objective data furnished by the issuer.[3] If it appears that the security no longer meets the maintenance requirements, the Corporation notifies the issuer in writing describing the basis on which the Corporation is considering delisting the security and proposes to meet with the issuer to hear reasons why the issuer believes the security should not be delisted.[4] If the issuer does not provide a sufficient basis demonstrating that it meets the current listing criteria, the Corporation will notify the issuer that it proposes to delist the security and that the issuer has the right to appeal the decision.[5] An issuer who wishes to appeal may, within five days of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE 5.5(a), Maintenance Requirements and Delisting Procedures.

[4] *See* PCXE 5.5(m)(1), Delisting Procedures.

[5] *See* PCXE 5.5(m)(2).

receiving written notice, petition the Secretary of the Corporation for an appeal hearing. The Secretary, in turn, processes the petition and forwards the request, along with the documentary evidence, to the Corporation's Board Appeals Committee, which conducts a special hearing in order to make a final determination on the merits of the issuer's petition.

The Corporation does not currently impose a fee in connection with the appeal of delisting decisions, and consequently, there is no disincentive for frivolous appeals of the Corporation's delisting decisions. This, coupled with the fact that the Corporation expends significant resources in accommodating appeals, has caused the Corporation to incur expenses that it is not capable of recovering. Given the increasing costs associated with an appeal hearing, *i.e.*, the allocation of time incurred by the Corporation's Listing Qualifications Department, the Secretary of the Corporation, Corporation counsel and the Board Appeals Committee, the Exchange proposes to impose hearing fees in order to recoup some of its costs. Accordingly, the Corporation proposes to amend PCXE Rule 5.5(m) to require issuers to submit a fee of $2,500 in order to cover a portion of the cost of an appeal hearing. The proposed rule requires that the issuer submit the fee within five days of receiving written notice of the Corporation's decision to delist a security. During this time frame, the issuer will also be required to submit a written request for a hearing. If the issuer does not submit a hearing fee or a written statement by the time prescribed by the Corporation, the issuer will be deemed to have waived its right to appeal the delisting decision.

The Exchange believes that the proposed fee is fair and reasonable as it is intended to cover only a portion of the Corporation's expenses associated with the processing and hearing of delisting appeals.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)[6] of the Act, in general, and section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments 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 self-regulatory organization consents, the Commission will:

A. By order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2002–05 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3305 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45391; File No. SR–Phlx–2001–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment Nos. 1 and 2 Relating to Solicitation of Trading Interest on the Exchange Floor

February 4, 2002.

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 March 8, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[3] On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the filing to request accelerated approval under section 19(b)(2) of the Act, as opposed to the proposal being immediately effective upon filing under 19(b)(C)(A) of the Act.

[4] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange amended the proposal to clarify that (1) the proposed rule change pertains to an order of a size greater that the AUTO–X guarantee; (2) a single crowd participant may voice a bid or offer that is independent of the trading crowd's collective response; (3) orders under the proposed rule change would be allocated pursuant to Phlx Rule 1014(g); (4) other proposed rule changes have been submitted to further foster competitive quoting among market makers; and (5) the Exchange believes that the proposed rule change should not impact the Quote Rule or the priority of customer orders.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice (''OFPA'') F–32 pertaining to the solicitation of quotations. The following is the text of the proposed rule change:

Additions are in *italics*.

Rule 1033 (a)(*i*) Size of Bid/Offer and Disseminated Size Guarantee. All bids or offers on the Floor for option contracts shall be deemed to be one for one option contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of option contracts. Responsibility for ensuring that customer orders are filled to a minimum of the disseminated size at the disseminated price is as set forth in Exchange Rules 1082 and 1015.

(ii) Solicitation of Quotations. In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

* * * * *

F–32 Solicitation of Quotations

In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Phlx Rule 1033(a)(ii) and OFPA F–32, which would permit the members of a trading crowd (including the specialist and Registered Options Traders (''ROTs'')) to discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices in response to a floor broker's request. The proposal is intended to codify and expressly permit a collective response by trading crowd members.[5]

Ordinarily, in meeting their obligation to make fair and orderly markets, Phlx specialists and ROTs make independent business decisions concerning what market to quote at a particular point in time, in lieu of discussing or agreeing with other members of the trading crowd on what should be the market for a particular option. In order to make fair and orderly markets and to respond efficiently to the needs of investors, however, the Phlx believes that there are circumstances where some coordination among ROTs and specialists is both necessary and beneficial.

For example, when a request for a market to buy or sell a large number of options contracts is presented by the floor broker to the trading crowd, the customer on whose behalf the request is made typically wants to know promptly at what single price all of the options represented by the request may be bought or sold. However, such large trades typically require more liquidity than any single ROT or the specialist is able to provide. Coordinated efforts of the trading crowd are, thus, necessary to respond to such a request and to fill any resulting order to buy or sell the option at a single price. In this regard, borrowing a phrase from corporate principles, the Phlx believes that the trading crowd is properly viewed as a ''joint venture,'' in which the resources of the individual crowd members are combined to produce the necessary liquidity to respond to the needs of investors and to compete effectively with other options exchanges.

When an options order exceeds the size that individual trading crowd members can execute, the Phlx believes that the trading crowd must act as a joint venture or single economic unit. In this situation, the trading crowd must reach agreement on the price they will offer because the customer desires a single price. Significantly, in the Exchange's view, the antitrust laws permit competitors to collaborate to produce and sell a product that they could not otherwise offer individually.[6] In fact, such activity is pro-competitive because it increases output and increases the number of competitors.[7]

Moreover, under the proposed rule change, Phlx Rule 1033(a)(ii) and OFPA F–32 would not force members of the trading crowd into the ''joint venture,'' and would not preclude price competition among members of the crowd or competition between a single crowd member and the rest of the crowd.[8] If any one ROT is willing to execute a trade at a price better than the

[5] On September 11, 2000, the Commission issued an order in relation to the settlement of *In the Matter of Certain Activities of Options Exchanges,* which requires the Exchange (as well as the other options exchanges) to implement certain undertakings. One such undertaking to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class. This proposed rule change is intended to effect the changes required by this undertaking. *See* Section IV.B.j. of Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[6] *See, e.g., NCAA* v. *Board of Regents,* 468 U.S. 85, 101 (1984) (recognizing that horizontal restraint on competition was essential to make the product available at all); *Broadcast Music, Inc.* v. *CBS,* 441 U.S. 1, 23 (1979) (''Joint ventures and other cooperative arrangements are also not usually unlawful, at least not as price-fixing schemes, where the agreement on price is necessary to market the product at all.''); and *SCFC ILC, Inc.* v. *Visa USA, Inc.,* 36 F.3d 958, 964 (10th Cir. 1994), *cert. denied.,* 115 S. Ct. 2600 (1995) (''horizontal restraint may be essential to create the product in the first instance'').

[7] The Phlx believes that the Antitrust Division of the Department of Justice and the Federal Trade Commission, agencies expert in competition analysis, also recognize this result. *See* FTC/DOJ Antitrust Guidelines for Collaborations among Competitors (April 2000) at 14, reprinted in *Antitrust Rep.,* April 2000 (also available at *www.ftc.gov.*) (''Competitor collaborations may involve agreements jointly to sell, distribute, or promote goods and services that are either jointly or individually produced. Such agreements may be pro-competitive, for example, where a combination of complementary assets enables products more quickly and efficiently to reach the marketplace.'').

[8] *See* note 4, *supra.* Amendment No. 2 amends the proposed rule language to clarify that individual trading crowd members can voice bids or offers that are independent of the trading crowds collective response and also indicates that other proposed rule changes have been submitted to the Commission to foster competitive pricing.

prevailing market, the ROT could bid against the crowd and take the entire trade, as provided by Phlx Rule 1014(g)(i). If one or more ROTs have the necessary liquidity and believe that they can profit by taking order flow away from the crowd by independently offering a better price to the floor broker, they are free to do so.[9] Thus, the Phlx believes that when read together with existing Phlx rules, Phlx Rule 1033(a)(ii) and OFPA F–32 are well designed to enable the Exchange to provide the required liquidity to execute large orders, while retaining the potential for price competition from ROTs in the crowd.

Finally, the Phlx notes that unlike an exchange with a single specialist and no competing market makers, the Phlx's market structure requires that this activity be permitted so as to allow the Phlx to better compete with the other options exchanges and better serve the investing public

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by enhancing the Exchange's ability to make competitive, fair and orderly markets. Moreover, the Exchange believes that the proposal responds to the needs of investors by facilitating prompt and efficient order execution, while promoting fair competition, consistent with Section 11A(a)(i) and (ii).[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[9] In assessing the competitive effects of a joint venture, the antitrust agencies regard the continued ability for individual members of the joint venture to compete against the venture as an important factor weighing toward its lawfulness. FTC/DOJ Antitrust Guidelines for Collaborations among Competitors at 19 (''In general, competitive concern likely is reduced to the extent that participants have actually continued to compete, either through separate, independent business operations or through membership in other collaborations, or are permitted to do so.'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(i) and (ii).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Phlx 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–33 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3303 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3391]

State of Tennessee

Maury County and the contiguous Counties of Giles, Hickman, Lawrence, Lewis, Marshall and Williamson in the State of Tennessee constitute a disaster area due to damages caused by heavy rains and flooding that began on January 22, 2002 and continued through January 25, 2002. Applications for loans for physical damage may be filed until the close of business on April 8, 2002 and for economic injury until the close of business on November 6, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 339106 and for economic injury the number is 9O4200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 6, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3374 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No.: 05/05–0219]

Capital Fund, Inc.; Notice of Surrender of License

Notice is hereby given that *Capital Fund, Inc., located at P.O. Box 80225, Lansing, MI 48908–0225,* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Capital Fund, Inc. was licensed by the

Small Business Administration on September 8, 1993.

Under the authority vested by the Act and pursuant to the regulations promulgate thereunder, the surrender of the license was accepted on February 4, 2002, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 5, 2002.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–3375 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Renewal of Regional Resource Stewardship Council

Pursuant to the Federal Advisory Committee Act (FACA) and 41 CFR 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Regional Resource Stewardship Council (Council) has been renewed for a two-year period beginning February 3, 2002. The Council will provide advice to the Tennessee Valley Authority (TVA) on issues affecting TVA's natural resource stewardship activities.

Numerous public and private entities are traditionally involved in the stewardship of the natural resources of the Tennessee Valley region. It has been determined that the Council continues to be needed to provide an additional mechanism for public input regarding stewardship issues.

Further information regarding this advisory committee can be obtained from Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: January 23, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 02–3307 Filed 2–11–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2; Notice No. 13]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts—Extension of Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols.

SUMMARY: FRA amends its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). The only amendment to this document is the second extension of a previously granted exception that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. This exception now runs until April 5, 2002.

DATES: The amendments to the Order are effective February 12, 2002.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web Site (*www.dms.dot.gov*) and click on the ''Help'' menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In five subsequent notices, FRA amended the Order to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; and 66 FR 57771, November 16, 2001.

Background

FRA is making the amendment to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the sole amendment to this Order is to extend temporary operating protocols for MBTA that had expired on February 1, 2002. The amendment, which allows these protocols to remain effective until April 5, 2002, will be effective for slightly more than 60 days and is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest. FRA will continue to monitor the progress of MBTA towards equipping, maintaining and scheduling sufficient units to run all trains with operative ACSES.

Final Extension of MBTA Temporary Operating Protocols

In a December 13, 2001 letter, MBTA requested a three-month extension of the temporary operating protocols because of an anticipated inability to equip sufficient locomotives with ACSES by February 1, 2002. At this stage in its development, new ACSES software contains relatively minor modifications from the software installed on already equipped units. FRA therefore expects the parties to this Order to resolve any remaining issues quickly. With this expectation, FRA grants MBTA a final extension of the temporary operating protocols for slightly more than 60 days. During this

interval, MBTA should devote attention to fleet management to ensure that sufficient units are equipped with ACSES by the time this latest and last extension expires on April 5, 2002. Furthermore, MBTA should do its upmost to maximize the use of ACSES equipped units on ACSES territory, ensuring that ACSES equipped locomotives and cab cars are utilized to their full potential in ACSES service. Other than the extension granted above, the temporary operating protocols specified in Notice No. 11 (66 FR 34512, June 28, 2001) remain in effect without change.

Implementation of Data Radio Systems

Finally, FRA notes that, with the inclusion of this amendment, it has granted six requests for relief from the Order's original timetable. The Order requires data radio systems to be installed within one year of ACSES installation. In an August 28, 2001 letter, Amtrak requested that FRA suspend the Order's requirement to enforce temporary speed restrictions with temporary transponders until Amtrak fully implements data radio enforcement. FRA's October 31, 2001 response asked Amtrak to justify more fully this request to suspend positive protection for roadway workers. While Amtrak has yet to respond to the FRA letter, this latest request for relief highlights that Amtrak is in arrears in its commitment to install data radios. FRA is aware of the financial issues facing Amtrak and other parties to this Order, but the parties must commit fully to the extended deadlines for completion of ACSES design and implementation.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Paragraph 11 is amended as follows:

11. *Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols.*

(a) Effective upon February 12, 2002 until April 5, 2002, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

Issued in Washington, DC, on January 31, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–3390 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2001–10903]

Commercial War Risk Hull and Protection and Indemnity Insurance on Title XI Mortgaged Vessels Operated Exclusively on the Inland Rivers and Intercoastal Waterways of the United States and on the Great Lakes

AGENCY: Maritime Administration, Transportation.

ACTION: Final policy review.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, U.S. Department of Transportation, Maritime Administration, Director, Office of Insurance and Shipping Analysis, Telephone (202) 366–2400, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

SUMMARY: The Maritime Administration (MARAD) has for the time being determined that it will continue to follow its current long-standing policy that waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels which operate exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. MARAD, however, retains the option to rescind or revise the current waiver policy and to impose the full war risk cover on all Title XI vessels in the future, if MARAD determines that circumstances warrant.

SUPPLEMENTARY INFORMATION: MARAD published a Notice in the **Federal Register** on October 30, 2001, (66 FR 54799) Docket No. MARAD 2001–10903, with respect to the waivers of commercial war risk insurance granted operators of Title XI mortgaged vessels operated exclusively on the U.S. inland waters/Great Lakes, requesting comments by November 13, 2001. The Notice stated that some experts were predicting a possible marine threat, either as a means or as a target or both, if another terrorist attack were to occur against the United States. In light of this and the September 11th events, the Notice stated that MARAD believed it should revisit the existing inland/Great Lakes war risk insurance waiver policy and request public comment on whether MARAD should change its current waiver policy. It was noted that MARAD has the authority to rescind or revise the existing waiver policy and to impose the full war risk cover on all Title XI vessels, if MARAD determines that it is now necessary.

The Notice indicated that MARAD currently waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels, which are operated exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. This policy was approved by the Assistant Secretary of Commerce for Maritime Affairs on June 30, 1971, and has remained in effect ever since. Most Title XI companies operating exclusively inland or on the Great Lakes have taken advantage of this waiver. MARAD estimates that approximately 20 companies with over 500 vessels (including a large number of inland barges) are not insured for war risk.

The Notice stated that the standard war risk insurance policy covers a number of non-marine peril risks, including warlike operations, strikes, civil unrest and acts of terrorism. The Notice pointed out that the basic underlying assumption for the war risk waiver for inland water/Great Lakes was that the threat of attack within the continental 48 states or Great Lakes was very slight. The Notice stated that the events of September 11, 2001, called this basic assumption into question.

The Notice concluded that as a consequence, MARAD may begin to require that some or all of the inland Title XI vessels have war risk cover, although MARAD may not require war risk cover for all inland Title XI vessels because significant groups or fleets of inland barges are widely dispersed on the inland waters at any point in time. The Notice stated that this wide distribution limits our inland/Great Lakes Title XI exposure; therefore, the risk of significant loss from any one event or target may be relatively small.

Timely comments to the Notice of October 30, 2001, were received by November 13, 2001, from American Steamship Company; Lake Carriers' Association; and Canal Barge Company, Inc. By letter dated December 13, 2001, Alter Barge Line, Inc. also submitted comments. All commenters were opposed to any change in MARAD's current waiver policy for commercial war risk insurance on Title XI mortgaged vessels operated on the inland waterways/Great Lakes. These comments are summarized below:

American Steamship Company (ASC)

ASC recommends that the current waiver policy continue without any modification or changes. Although ASC recognizes that the events of September 11th would cause prudent underwriters to review policies, it believes there is no appreciable increase in the risk to Great Lakes shipping to warrant the cancellation or modification of the current waiver policy. Great Lakes vessels are relatively slower moving vessels, dispersed throughout the Great Lakes region, carrying relatively low value non-strategic cargoes such as iron ore and aggregate to U.S. and Canadian ports. ASC states that it has carefully considered the current risks to vessels operating on the Great Lakes, that there has been no significant change to these risks for the reasons cited above, and no change in the current waiver policy is necessary.

Lakes Carriers' Association (LCA)

LCA represents 12 American corporations operating 56 U.S.-flag vessels exclusively on the Great Lakes. LCA urges MARAD to not require war risk insurance for U.S.-flag lakers with Title XI mortgages. LCA states that while the concept of war risk insurance is certainly valid for vessels that sail in harm's way, the Great Lakes are the sole jurisdiction of two great democracies, the United States and Canada, and are well protected by each nation's Coast Guard. With only one entrance from the oceans, the U.S. and Canadian Coast Guards can inspect all third-flag vessels, so no attacker disguised as a freighter could sneak about the Lakes.

LCA states that the events of September 11th and the attack on the USS COLE have made us aware that the unthinkable is not always so unthinkable, but again, given that lakers carry dry-bulk cargoes, even a suicide attack from a small boat or airplane would not produce a catastrophic explosion and total loss of the vessel. According to LCA, the likelihood of a successful attack is slight, but the current economic plight of America's steel industry has extended to U.S.-flag operators on the Great Lakes. The industry is in a life and death struggle and cannot bear one unnecessary expense. LCA concludes its comments by urging MARAD to continue to waive the requirement for war risk insurance on U.S.-flag Title XI lakers.

Canal Barge Company, Inc. (Canal Barge)

Canal Barge strongly requests that MARAD make no changes in its waiver policy for war risk insurance. Canal Barge states that the risks from non-marine perils such as terrorism or civil unrest remains slight today in view of the significantly increased law enforcement and security precautions that have been taken by federal, state, and local agencies and the maritime industry itself. The wide dispersion of barges and other Title XI mortgaged vessels on the inland/Great Lakes waterways limits the risk of significant loss from any one terrorist or similar event. Canal Barge believes that with little or no change in the risk facing Title XI mortgaged vessels on the inland/Great Lakes waterways, there is no demonstrated need to amend the current waiver policy for Title XI mortgaged vessels operated on the inland/Great Lakes waterways.

Alter Barge Line, Inc. (Alter Barge)

Alter Barge strongly urges MARAD not to change its policy regarding war risk insurance. Alter Barge views are based on the following factors. First, as was discussed in the **Federal Register**, barges are widely dispersed. Alter Barges states that it rarely has more than five barges in the same location. Consequently, the loss from any specific terrorist act would not be significant to MARAD or Alter Barges. Second, Alter Barges believes that inland barges do not present an especially attractive target for terrorists. Such vessels are unmanned, relatively small and inexpensive and carry basic, low cost materials. Third, given the current state of the barge market, the imposition of an additional charge for high-cost, war risk insurance would be an unwanted and unnecessary expense. Lastly, the cost of insurance would erode the attractiveness of Title XI financing versus private financing which does not require this type of insurance.

Conclusion

A possible marine threat, either as a means to carry out an attack or a target or both, is a realistic concern in planning for defense against terrorist activity. Recognizing this, there has definitely been a concerted effort to increase security precautions in the maritime area, particularly with respect to port security and inspection of foreign-flag vessels using U.S. ports with special emphasis on ascertaining the types of cargoes transported.

Several commenters note that the dispersion of barges and other Title XI mortgaged vessels on the inland/Great Lakes waterways limits the risk of significant loss from one terrorist attack. Commenters also note that vessels operating on the inland/Great Lakes waters are not particularly rewarding targets considering the ships and low-valued bulk cargoes carried.

Based on the comments received, the types of vessels and fleets of vessels involved in the Title XI programs on the Great Lakes and inland waters, and the security effort already undertaken, MARAD has determined that it will continue to follow the current long-standing policy that waives the Security Agreement requirement for commercial war risk hull and protection and indemnity insurance on Title XI mortgaged vessels which operate exclusively on the inland rivers and intercoastal waterways of the United States and the Great Lakes for the time being. MARAD, however, retains the option to rescind or revise the current waiver policy and to impose the full war risk cover on all Title XI vessels in the future, if MARAD determines that circumstances warrant.

Dated: February 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–3370 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 67, No. 29

Tuesday, February 12, 2002

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

Correction

In notice document 02–2966 beginning on page 5602 in the issue of Wednesday, February 6, 2002, make the following correction:

On page 5602, in the first column, under the heading **TIME AND DATE**, ''10 a.m. (EST),'' should read, ''10 a.m. (EST), February 19, 2002''.

[FR Doc. C2–2966 Filed 2–11–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimates for Four-Person Families (FFY 2003); Notice of the Federal Fiscal Year (FFY) 2003 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children, Families, Office of Community Services, Division of Energy Assistance

Correction

In notice document 02–2224 beginning on page 4454 in the issue of Wednesday, January 30, 2002, make the following correction:

On pages 4456 and 4457, the table headings are corrected to read as follows: ''ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FEDERAL FISCAL YEAR 2003[1]''.

[FR Doc. C2–2224 Filed 2–11–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prices Power International Denial of Application

Correction

In notice document 02–1415 beginning on page 2910 in the issue of Tuesday, January 22, 2002, make the following correction:

On page 2912, in the third column, in the last sentence of the last paragraph, ''February 21, 2001'' should read, ''February 21, 2002''.

[FR Doc. C2–1415 Filed 2–11–02; 8:45 am]

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Federal Register

Tuesday,
February 12, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI27

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for five plants endemic (restricted) to carbonate soils in the San Bernardino Mountains of southern California pursuant to the Endangered Species Act of 1973, as amended (Act). Four of the plants, *Astragalus albens* (Cushenbury milk-vetch), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) are federally listed as endangered and one plant is federally listed as threatened, *Erigeron parishii* (Parish's daisy). All five plants were federally listed on August 24, 1994. The following total acreages are proposed for designation as critical habitat for each of the following plants in San Bernardino County, California: *A. albens*, approximately 1,765 hectares (ha) (4,365 acres (ac)); *Erigeron parishii*, approximately 1,790 ha (4,420 ac); *Eriogonum ovalifolium* var. *vineum*, approximately 2,815 ha (6,955 ac); *L. kingii* ssp. *bernardina*, approximately 415 ha (1,025 ac); and *O. parishii* var. *goodmaniana*, approximately 1,275 ha (3,150 ac). Because of the considerable overlap in the proposed critical habitats for each of the five carbonate plants, the total area being proposed as critical habitat is approximately 5,335 ha (13,180 ac).

Several cooperative regional planning efforts that encompass the habitat for the carbonate plants are currently under development. These include the Carbonate Habitat Management Strategy (CHMS), the California Desert Conservation Area Plan (CDCA), and the West Mojave Plan. The CHMS deals specifically with carbonate plants and their habitats. Participants in this effort include the U.S. Forest Service, the Bureau of Land Management (BLM), the Service, and a number of private stakeholders (*e.g.,* mining interests).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comments on the proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until the close of business on April 15, 2002. Public hearing requests must be received by March 29, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any of several methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office during normal business hours at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The five plants addressed in this proposed designation of critical habitat, *Astragalus albens* (Cushenbury milk-vetch), *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) (collectively called ''carbonate plants'' in this document), are restricted primarily to carbonate deposits and their derived soils in the San Bernardino Mountains of San Bernardino County, CA (59 FR 43652). Collectively, these five species are found along a 56 kilometer (km) (35 mile (mi)) portion of the San Bernardino Mountains between 1,171 and 2,682 meters (m) (3,842 and 8,800 feet (ft)) in elevation. This area contains outcrops of carbonate substrates, primarily limestone and dolomite, in several bands running on an east-west axis along the desert-facing slopes of the San Bernardino Mountains; it is generally known as the ''carbonate belt''. All of the carbonate plants are endemic to California.

Limestone mining was cited as the primary threat to the five carbonate plants in the final listing rule (59 FR 43652). The threats to these plants continue to be population reduction and habitat loss, degradation, and fragmentation from surface mining activities. The carbonate plants occur mainly on public lands with unpatented mining claims or on lands that have been patented. At the time of listing, a significant number of carbonate plant occurrences and carbonate plant habitats had been negatively affected (59 FR 43652). Carbonate plant losses and habitat destruction/degradation are expected to continue under ongoing and expanded limestone mining operations.

The U.S. Forest Service, the BLM, the Service, and a number of private stakeholders (*e.g.,* mining interests) are developing a strategy, the CHMS, to conserve carbonate plants while accommodating other land uses. The goals of the CHMS are: (1) To protect the plants and the ecosystems upon which they depend, (2) to guide impact minimization and compensation for unavoidable impacts, (3) to streamline reviews of activities in areas determined to be refuges, and (4) to guide habitat restoration. Tasks to implement the conservation strategy include the development of preserve designs. Other similar planning efforts that include some areas of carbonate habitat include the CDCA and the West Mojave Plan (both of which are spearheaded by the BLM).

There are approximately 13,200 ha (32,600 ac) of carbonate substrates in the northeastern portion of the San Bernardino Mountains that provide suitable habitat for, and may support most of, the carbonate plants (59 FR 43652, Neel 2000, San Bernardino National Forest (SBNF) geographic information system (GIS) data 2001). This acreage is contained within the 64,900 ha (160,300 ac) draft CHMS area. According to the SBNF Carbonate Species Suitable Habitat Models (Sean Redar and Scott Eliason, SBNF, *in litt.* 2001), there are a total of approximately 19,700 ha (48,669 ac) of potential

carbonate plant habitat for the five plants (the sum is not equal to the habitat for each species because there is some overlap). Based on this model, the estimated suitable habitat for each species is: *Astragalus albens*, approximately 6,868 ha (16,964 ac); *Erigeron parishii*, approximately 8,428 ha (20,818 ac); *Eriogonum ovalifolium* var. *vineum*, approximately 8,949 ha (22,103 ac); *Lesquerella kingii* ssp. *bernardina*, approximately 6,753 ha (16,679 ac); and *Oxytheca parishii* var. *goodmaniana*, approximately 7,518 ha (18,570 ac).

The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (CNPS 2001) classifies each of the five carbonate plants as List 1B; which they define as rare, threatened, or endangered in California and elsewhere. The California Native Plant Society (CNPS) classifies all but one of the carbonate plants as being distributed in one to several highly restricted occurrences (with *Erigeron parishii* distributed in a limited number of occurrences). The CNPS also classifies each of the carbonate plants as ''endangered throughout its range.''

The five carbonate plant species in this document are treated as a group because they are restricted to soils that are ultimately derived from limestone, dolomite, or other substrates rich in calcium carbonate in the San Bernardino Mountains, California, and face similar threats. However, each of the five carbonate plants represents a distinct evolutionary lineage, and each has a unique set of ecological requirements and tolerances (Neel 2000).

Species Descriptions

Astragalus albens (Cushenbury Milk-Vetch)

Astragalus albens was described by Edward L. Greene (1885) based on a collection made by Samuel B. Parish and William F. Parish in 1882. Rydberg (1927) placed this species in the genus *Hamosa*. Rupert Barneby (1964) includes *Hamosa* in the genus *Astragalus*. Barneby (1959), Munz (1974), and Spellenberg (1993), all recognize this species as *Astragalus albens*.

Astragalus albens is a small plant in the pea family (Fabaceae). Individual plants are short-lived perennials, but may flower in their first year. The slender silvery-white-haired stems are decumbent (lie flat on ground with tips of stems turned upward), up to 30 centimeters (cm) (1 ft) long, with compound leaves consisting of 5 to 9 small leaflets. The plant's purple flowers have banner petals reaching up to 1 cm (0.4 inch (in)) long and occur in 5 to 14 flowered terminal racemes (flower stalks). The fruits, at maturity, are 10 to 18 millimeters (mm) (0.4 to 0.7 in) long and up to 3.5 mm (0.1 in) wide. The fruits are crescent shaped with three sides and two chambers and become papery in maturity. The plants generally flower from March to June and fruits mature as early as May (Spellenburg 1993).

Occurrences of *Astragalus albens* are scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from Dry Canyon southeastward to the head of Lone Valley, a range of 24 km (15 mi) (Barrows 1988c, 59 FR 43652, California Natural Diversity Data Base (CNDDB) 2001, CNPS 2001). In the final rule to list the carbonate plants, we indicated that there were fewer than 20 known occurrences that supported *A. albens*. The CNDDB (2001) identifies 17 extant element occurrences. The SBNF mapped 103 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Astragalus albens is typically found within singleleaf pinyon-Utah juniper, blackbush scrub, singleleaf pinyon, pinyon woodland, pinyon-juniper woodland, and Joshua tree woodland vegetation communities (Gonella 1994, Gonella and Neel 1995, Neel 2000). Plants closely associated with *A. albens* include *Fremontodendron californicum* (flannelbush), *Coleogyne ramosissima* (blackbush), *Echinocereus triglochidiatus* var. *mojavensis* (Mound cactus), *Prunus fasciculatus* (desert almond), and *Yucca schidigera* (Mojave yucca) (Gonella 1994, Gonella and Neel 1995).

Astragalus albens is typically found on carbonate soils derived directly from decomposing limestone bedrock along rocky washes with no apparent preference for aspect. It is generally found in areas with an open canopy cover, little accumulation of organic material, rock cover exceeding 75 percent, and gentle to moderate slopes (5 to 30 percent) (Neel 2000). Most *A. albens* occurrences are found at elevations between 1,524 and 2,012 m (5,000 and 6,600 ft) (59 FR 43652), but Neel (2000) documented the elevation range between 1,171 and 2,013 m (3,864 and 6,604 ft). This range is at the lower elevational limit of the five carbonate plant species discussed in this rule (Gonella and Neel 1995). Most of the *A. albens* occurrences below 1,500 m (about 5,000 ft) are found in rocky washes with limestone outwash from erosion (59 FR 43652, CNDDB 2001, SBNF GIS data 2001). Known occupied habitat for this species was mostly correlated with the Bird Spring Formation, Permian and Pennsylvanian age carbonate rock (S. Redar and S. Eliason, *in litt.* 2001). Soils at sites supporting *A. albens* have a higher percentage of calcium than soils that do not support this species (Gonella and Neel 1995).

Erigeron parishii (Parish's Daisy)

Erigeron parishii was described by Asa Gray (1884) based on specimens collected by Samuel B. Parish at Cushenbury Spring in 1882. It is a small perennial herb of the aster family (Asteraceae). Plants grow 10 to 30 cm (4 to 12 in.) high and flower from May through June. The simple linear leaves are covered with soft, silvery hairs, giving an overall light-green appearance to the plant. Flower heads are solitary, with deep rose to lavender ray flowers and yellow disk flowers borne at the tips of leafy stems. The flower heads have grayish-green, glandular bracts at the base of each flower head (59 FR 43652, Nesom 1993).

Erigeron parishii has the widest geographic distribution of the five carbonate plants, with a range that spans approximately 56 km (35 mi) along the carbonate belt in the northeastern San Bernardino Mountains, extending from Pioneertown in the east to Furnace Canyon in the west. This distribution includes occurrences on Tip Top Mountain and in Arctic, Cushenbury, Arrastre, and Rattlesnake Canyons (Krantz 1979a, Barrows 1988a, 59 FR 43652, CNDDB 2001). Recent surveys in Long Canyon (the historical eastern-most occurrence) did not locate any *E. parishii* plants (Neel 2000). We identified 25 occurrences that support *E. parishii* in the final listing rule (59 FR 43652). The CNDDB (2001) identifies 34 extant element occurrences. The SBNF mapped 87 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Erigeron parishii is typically associated with singleleaf pinyon-Utah juniper, singleleaf pinyon, pinyon-juniper woodlands, blackbush scrub, and creosote bush-bursage scrub vegetation communities (59 FR 43652, Neel 2000, Neel and Ellstrand 2001). Plants closely associated with *E. parishii* include *Pinus monophylla* (singleleaf pinyon), *Juniperus californica* (California juniper), *Yucca brevifolia* (Joshua tree), *Coleogyne ramosissima*, and *Astragalus albens*

(Gonella 1994, Gonella and Neel 1995, CNDDB 2001).

Erigeron parishii typically grows on limestone or dolomite soils occurring on dry, rocky slopes, shallow drainages; and outwash plains (59 FR 43652). Some *E. parishii* occurrences grow on a granite/limestone interface, usually when granitic parent material has been overlaid with limestone materials washed down from upslope (59 FR 43652). An occurrence at the Burns Pinyon Ridge Reserve/Pioneertown area grows on quartz monzonite soils where there is no apparent limestone alluvium (Neel 2000). *Erigeron parishii* is generally found at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft), which is at the lower elevations of the carbonate belt (59 FR 43652, Neel 2000). It is most commonly found in areas with slopes less than 10 degrees with about 50 percent of the occurrences on slopes that have a north aspect (Neel 2000).

Eriogonum ovalifolium var. *vineum (Cushenbury Buckwheat)*

Eriogonum ovalifolium var. *vineum* was described as *E. vineum* by John Kunkel Small (1898) based on a 1894 collection made by Samuel B. Parish near Rose Mine in the San Bernardino Mountains. Nelson (1911) treated the plant as a variety, *E. ovalifolium* var. *vineum*. This combination has incorrectly often been attributed to Jepson (1914), (Reveal 1989, Hickman 1993). Jepson (1914) did publish the combination but subsequently (Jepson 1925) realized the priority of Nelson's combination, which was followed by Abrams (1944), Munz and Keck (1959), and Munz (1974).

Eriogonum ovalifolium var. *vineum* is a perennial member of the buckwheat family (Polygonaceae) that forms low, dense mats typically 15 to 25 cm (6 to 10 in.) in diameter, but may reach 50 cm (20 in.). The leaves are round to ovate, white-woolly on both surfaces, and are 0.7 to 1.5 cm (0.3 to 0.6 in.) long. The flowers are whitish-cream, each petal with a wine-colored midrib, darkening to reddish or purple with age, and flowers are borne on stalks reaching 10 cm (4 in.) tall. Plants flower from May through June (Munz 1974, Hickman 1993). This species is primarily an outcrosser (pollen source for seed production is from another plant) (Neel and Ellstrand 2001).

Eriogonum ovalifolium var. *vineum* occurs in the carbonate belt of the northeastern San Bernardino Mountains extending from White Mountain in the west to Rattlesnake Canyon in the east, a distance of approximately 40 km (25 mi). This includes occurrences in Arctic and Cushenbury Canyons, Terrace and Jacoby Springs, along Nelson Ridge, and southeast to near Onyx Peak (Barrows 1988b; Brown, *in litt.* 1992; Gonella and Neel 1995; Tierra Madre Consultants 1992; 59 FR 43652; CNDDB 2001). In the final listing rule, we identified 20 occurrences that support *E. ovalifolium* var. *vineum*. The CNDDB (2001) identifies 32 extant element occurrences. The SBNF mapped 239 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

This species inhabits open areas in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, pinyon, pinyon-juniper, Joshua tree woodlands, and blackbush scrub vegetation communities (Gonella 1994, Gonella and Neel 1995, 59 FR 43652, Neel 2000). Plants closely associated with *Eriogonum ovalifolium* var. *vineum* include *Fremontodendron californicum, Arctostaphylos glauca* (big-berry manzanita), *A. patula* (green-leaf manzanita), *Phacelia douglasii* (Douglas' phacelia), *Yucca brevifolia, Pinus monophylla, Astragalus albens*, and *Erigeron parishii* (Gonella 1994, Gonella and Neel 1995, CNDDB 2001).

Eriogonum ovalifolium var. *vineum* typically grows with soils derived from limestone or other carbonate substrates (Hickman 1993, 59 FR 43652, CNDDB 2001). It is generally found on gentle slopes between 10 and 25 degrees (but occasionally on steep slopes up to 80 degrees) mostly with north or west aspects. Other habitat characteristics include open areas with powdery fine soils and little accumulation of organic material, a canopy cover generally less than 15 percent, and rock cover exceeding 50 percent. *Eriogonum ovalifolium* var. *vineum* was found at the widest elevational range of all the carbonate plants, between 1,400 and 2,400 m (4,600 and 7,900 ft) (59 FR 43652, Neel 2000). The known occupied habitat for *E. ovalifolium* var. *vineum* was correlated mostly with the Bird Spring and Bonanza King Formations (S. Redar and S. Eliason, *in litt.* 2001).

Lesquerella kingii ssp.*bernardina (San Bernardino Mountains Bladderpod)*

Lesquerella kingii ssp. *bernardina* is a member of the mustard family (Brassicaceae) and was first described by Munz (1932) as *Lequerella bernardina* based on a collection made by Frank W. Peirson at the east end of Bear Valley in 1924. Munz (1958) subsequently reduced this to a subspecies and published the combination *L. kingii* ssp. *bernardina*.

Lesquerella kingii ssp. *bernardina* is a silvery, short-lived perennial member of the mustard family (Brassicaceae). It grows to 10 to 20 cm (4 to 8 in.) tall. The basal leaves are elliptic to ovate with petioles 2 to 6 cm (0.8 to 2.4 in.) long. Flowers are borne in terminal racemes, and bloom from May to June. The yellow petals are 9 to 13 mm (0.35 to 0.5 in.) long, and styles are 6 to 9 mm (0.24 to 0.35 in.) long. The spherical fruits are short-haired, 2-chambered, and contain 2 to 4 seeds per chamber (Rollins 1993).

Lesquerella kingii ssp. *bernardina* is currently known from two areas around Bear Valley. One occurrence is on the north side of Big Bear Lake near the east end of Bertha Ridge and adjacent to Big Bear City. The other occurrence is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge site (59 FR 43652, CNDDB 2001). This species has the smallest known range of the five carbonate plants. In the final rule to list the carbonate plants, we identified these two areas that support L. kingii ssp. bernardina. Currently, the CNDDB (2001) identifies four element occurrences. The SBNF mapped 22 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Lesquerella kingii ssp. *bernardina* typically is found within singleleaf pinyon-mountain juniper, white fir forest, Jeffrey pine-western juniper woodland, subalpine forest vegetation communities, and occasionally on old roads (Myers and Barrows 1988, 59 FR 43652, Gonella 1994, Gonella and Neel 1995, Neel 2000, CNDDB 2001). Plants closely associated with *L. kingii* ssp. *bernardina* include *Pinus contorta* ssp. *murrayana* (lodgepole pine), *P. flexilis* (limber pine), *P. jefferyi* (Jeffery pine), *P. monophylla, Juniperus occidentalis* ssp. *australis* (western juniper), and *Eriogonum ovalifolium* var. *vineum* (Gonella 1994, Neel 2000, CNDDB 2001).

Lesquerella kingii ssp. *bernardina* is generally found on soils derived from dolomite substrates (Brown, *in litt.* 1992). It is usually found either on brown, sandy soils with white rocks or on large rock outcrops in open areas with little accumulation of organic material. It grows on dry flats and slopes of low to moderate steepness (mostly between 10 and 20 degrees) with no apparent aspect preference. The dolomite soils that support *L. kingii* ssp. *bernardina* are south and west of the majority of the sites of the other four carbonate plant species. *Lesquerella kingii* ssp. *bernardina* occupies the narrowest elevational range of the five carbonate plants, between 2,098 and

2,700 m (6,883 and 8,800 ft) (Rollins 1993, 59 FR 43652). The known occupied habitat for this plant is associated with the Bonanza King Formation and other Cambrian age substrates (S. Redar and S. Eliason, *in litt.* 2001).

Oxytheca parishii var. *goodmaniana (Cushenbury Oxytheca)*

Barbara Ertter (1980) described the variety *Oxytheca parishii* var. *goodmaniana* based on material collected by S. P. Parish and W. F. Parish in 1882 near Cushenbury Spring. Previous collections of this species were identified as *Oxytheca parishii* var. *abramsii* or *Oxytheca watsonii.*

Oxytheca parishii var. *goodmaniana* is a small, wiry annual plant belonging to the buckwheat family (Polygonaceae). Specimens grow to 5 to 30 cm (2 to 12 in.) tall and have a basal rosette of leaves. Each leaf is 1 to 3 cm (0.4 to 1.2 in.) long. The six small flowers have white to rose or greenish-yellow perianth segments (undifferentiated whorl of petals and sepals). Flowers occur in clusters of 3 to 12 and are surrounded at their base by a funnel-shaped involucral bract (modified leaf).

Oxytheca parishii var. *goodmaniana* is an annual species, so the number of individual plants present fluctuates from year to year, depending on the seed bank dynamics, rainfall, and temperature. Because it is an annual, has few occurrences, and the total number of individuals at some occurrences is often low, this species may be more susceptible to extinction from environmental stochasticity (random events) than the other four carbonate plant species (59 FR 43652).

Oxytheca parishii var. *goodmaniana* is scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from White Mountain in the west to Rattlesnake Canyon in the east. This distribution includes occurrences near Cushenbury Spring; Cushenbury, Marble, Arctic, Wild Rose, and Furnace Canyons; Blackhawk, Mineral, and Tip Top Mountains; Terrace Springs; Rose Mine and Green Lead gold mine (59 FR 43652, CNDDB 2001, CNPS 2001, Gonella and Neel 1995). This species occupies the second-smallest geographical area of the five carbonate plants. In the final listing rule, we identified seven known extant occurrences. The CNDDB (2001) identifies 16 element occurrences. The SBNF mapped 93 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Oxytheca parishii var. *goodmaniana* is typically found in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, and canyon live oak woodlands vegetation communities (59 FR 43652, Neel 2000). Plants closely associated with *O. parishii* var. *goodmaniana* include *Cercocarpus ledifolius* (mountain mahogany), *Arctostaphylos glauca, Chrysothamnus viscidiflorus* (yellow rabbitbrush), and *Achnatherum coronata* (needlegrass) (CNDDB 2001).

Oxytheca parishii var. *goodmaniana* is typically found on soils derived from limestone, dolomite, or a mixture of limestone and dolomite substrates (Tierra Madre Consultants 1992, 59 FR 43652, Neel 2000). Hickman (1993) describes it as occurring on limestone talus. Neel (2000) found that it generally occurs in areas with gentle slopes between 10 and 25 degrees with no apparent preference for aspect. *Oxytheca parishii* var. *goodmaniana* is typically found at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft) (Neel 2000). Known occupied habitat for this species is mostly correlated with the Bird Springs Formation, Bonanza King Formation, Monte Cristo Limestone, and Sultan Limestone, and Crystal Pass substrate (S. Redar and S. Eliason, *in litt.* 2001).

Habitat Descriptions

The San Bernardino Mountains support a wide diversity of natural habitats that are the result of their geographic position between the desert and coastal environments, geological history, elevation, varied topography, and uncommon geological substrates such as carbonate outcrops (*e.g.*, limestone and dolomite). The SBNF, which encompasses most of the San Bernardino Mountains, covers less than one percent of the land area within the State of California, yet reportedly contains populations of more than 25 percent of all native Californian plant species (Krantz 1994). The San Bernardino Mountains are also known to support one of the highest concentrations of endemic plants in the United States (Krantz 1994). This high rate of endemism includes a number of specialized plants that are restricted to carbonate substrates in this area (Gonella 1994, Krantz 1994).

Within the mountain range, carbonate rock outcrops occur in several east-west bands that run along the desert-facing slopes, from approximately White Mountain in the west to Blackhawk Mountain and Terrace Springs in the east. From here, the band of carbonate substrate narrows and turns southeast toward Rattlesnake Canyon and Tip Top Mountain. Disjunct (separate) outcrops occur on ridges to the north and south of the Big Bear Valley, and eastward to the Sawtooth Hills (U.S. Geologic Survey 1995).

Collectively, the ranges of these five species span 56 km (35 mi) and occupy elevations between 1,178 and 2,659 m (3,864 to 8,724 ft) in the San Bernardino Mountains (Neel 2000). Plant communities in this area vary greatly by substrate type and elevation and have been described by Holland (1986), Thorne (1995), Vasek and Barbour (1995), Vasek and Thorne (1995), and Neel (2000). Neel (2000) developed more detailed, quantitative descriptions of the vegetation types that are associated with the five carbonate plants using extensive vegetation sampling and found that most of the occurrences of each of the five carbonate plants are found in the following six vegetation types: blackbush scrub, canyon live oak, singleleaf pinyon, singleleaf pinyon-mountain juniper, singleleaf pinyon-Utah juniper, and white fir forest.

Blackbush scrub vegetation supports *Astragalus albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum.* It primarily occurs between 1,130 and 1,665 m (3,707 to 5,463 ft) in this area. Blackbush scrub vegetation is increasingly abundant at the higher elevations and is dominated by *Coleogyne ramosissima* (blackbush). The shrub cover is generally under 1 meter high and sometimes quite dense. The overstory is sparse and consists of *Yucca brevifolia, Pinus monophylla,* and *Juniperus osteosperma* (Utah juniper) (Neel 2000).

Singleleaf pinyon vegetation supports *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs between 1,420 and 2,440 m (4,659 to 8,005 ft) in this area. Singleleaf pinyon vegetation is dominated by *Pinus monophylla* (singleleaf pinyon). The shrub layer in this vegetation is relatively open and occasionally supports *Arctostaphylos glauca* (Neel 2000).

Canyon live oak vegetation supports *Oxytheca parishii* var. *goodmaniana* and primarily occurs between 1,793 and 2,440 m (5,883 and 8,005 ft) in this area. Canyon live oak vegetation is dominated by both *Quercus chrysolepis* (canyon live oak) and *Pinus monophylla.* Tree cover in this vegetation type is the densest of all of the vegetation types mentioned in this document, while shrub cover is the sparsest (Neel 2000).

Singleleaf pinyon-mountain juniper vegetation supports *Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca*

parishii var. *goodmaniana.* It primarily occurs between 1,909 and 2,745 m (6,263 and 9,005 ft) in this area. Singleleaf pinyon-mountain juniper vegetation is dominated by *Pinus monophylla* and *Juniperus occidentalis* ssp. *australis. Cercocarpus ledifolius* is the only characteristic understory species (Neel 2000).

Singleleaf pinyon-Utah juniper vegetation supports *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs between 1,212 and 2,390 m (3,976 and 7,841 ft) in this area. Singleleaf pinyon-Utah juniper vegetation is dominated by *Pinus monophylla* and *Juniperus osteosperma. Ephedra viridis* (green ephedra) and *Achnatherum coronatum* (needlegrass) are characteristic of the understory (Neel 2000).

White fir forest vegetation supports *Lesquerella kingii* ssp. *bernardina* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs on steep north-facing slopes between 2,196 and 2,720 m (7,205 and 8,924 ft) in this area. White fir forest vegetation is dominated by *Abies concolor* (white fir) and *Pinus flexilis* (limber pine) in the overstory (Neel 2000).

The carbonate plants have also been reported to occur in five other vegetation communities: Jeffrey pine-western juniper woodland, Joshua tree woodland, pinyon woodland, pinyon-juniper woodland, and subalpine forest (Krantz 1979a, 1979b; Neel 2000; CNDDB 2001). Jeffrey pine-western juniper woodland is reported to support *Lesquerella kingii* ssp. *bernardina* (CNDDB 2001). Joshua tree woodland and pinyon woodland are reported to support *Astragalus albens* and *Eriogonum ovalifolium* var. *vineum* (CNDDB 2001). Pinyon-juniper woodland is reported to support *A. albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum* (CNDDB 2001). Pinyon-juniper woodlands are generally associated with relatively steep slopes.

Some of these plant communities occur in the same general area (*e.g.,* singleleaf pinyon woodlands, canyon live oak woodland), but on noncarbonate soils. Big sagebrush, pebble plains, riparian, and meadow communities also occur within the carbonate plants area; however, they do not occupy large areas and do not support carbonate endemic plants.

Ecology

Little is known about certain aspects of the life history and population dynamics of carbonate plants, including their pollination biology, seed dispersal agents and patterns, seed bank dynamics, seed dormancy requirements, and seedling ecology and establishment rates (Neel 2000). However, the distributions of each of these plants have been well studied through numerous botanical investigations and project-level surveys funded by Federal agencies and mining companies (Krantz 1979a, 1979b; Wilson and Bennett 1980; Barrows 1988a, 1988b, 1988c; Tierra Madre Consultants 1992; and herbarium specimens at Rancho Santa Ana Botanic Garden). The general ranges of these species are described in Munz and Keck (1959), Barneby (1959), Munz (1974), Hickman (1993), Nessom (1993), Rollins (1993), Spellenberg (1993) and in the final listing rule (59 FR 43652). The carbonate plants do not appear to be specifically linked to early vegetation successional stages after disturbance; however, they are found on some surfaces that are naturally disturbed by landslides and substrate upheaval. Primarily, they occur in habitat that is undisturbed by human activities. They consistently occur on soils that are at least partially derived from carbonate substrates. However, each of these plants have specific habitat and microhabitat requirements, including parent geology, vegetation community type, associated species, soil pH, slope, and elevation (Neel 2000).

Occurrences of carbonate plants shift within the range of suitable habitat. Historically, occurrences may have periodically become extirpated, while other suitable habitat may have been colonized from other large occurrences. Given (1994) noted the need for enough suitable habitat to maintain equilibrium between naturally occurring local extirpations and colonizations. Not all habitat for a species is likely to be occupied at the same time, and failure to conserve enough suitable habitat could potentially reduce the size and viability of the metapopulation as surely as destruction of occupied habitat (Given 1994). A metapopulation has been described as ''* * *a set of populations (*i.e.,* independent demographic units; Ehrlich 1965) that are interdependent over ecological time. That is, although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that occur, say, on the order of every 10 to 100 generations'' (Harrison *et al.* 1988). The persistence of these species depends on the interrelatedness of local extirpations and recolonizations, the availability of newly suitable habitat, and dispersal (Given 1994; Hanski 1997, 1999; Hanksi and Gilpin 1991). *Harrison et al.* (2000) demonstrated this natural turnover and fluctuation in populations of five plants restricted to serpentine seeps in Napa and Solano counties, California. Because of these population dynamics, long-term persistence of the carbonate plants requires sufficient suitable habitat contiguous with areas that are currently occupied by the plants.

Each of the five carbonate plant species exhibits several limiting ecological factors that increases the probability for extirpation events to occur (*e.g.,* restricted distribution, habitat specialization, and short reproductive lifespans). These factors may, among other things, reduce gene flow between occurrences, reduce pollination between and among occurrences, and decrease the probability that new colonizations will occur. The amount of habitat required to sustain a species increases because of these limiting ecological factors (Burgman *et al.,* 2001).

Previous Federal Action

On December 15, 1980, we published a Notice of Review (NOR) of plants which included *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* as Category 1 candidate taxa and Erigeron parishii as a Category 2 taxon (45 FR 82480). The February 21, 1990, NOR of plants also included *Astragalus albens* as a Category 1 taxon and *Oxytheca parishii* var. *goodmaniana* as a Category 2 taxon (55 FR 6184). Category 1 taxa were those taxa for which substantial information on biological vulnerability and threats were available to support preparation of listing proposals. Category 2 candidates were taxa for which data in our possession indicated listing was possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules.

On November 19, 1991, we published a proposed rule in the **Federal Register** to list the five plants as endangered (56 FR 58332). On August 24, 1994, we published a final rule listing *Erigeron parishii* as threatened and *Astragalus albens, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* as endangered (59 FR 43652). At that time, we indicated that designation of critical habitat for these plants was not prudent because such designation would likely increase the

degree of threat from vandalism, collection, or other human activities.

On June 15, 2000, the CNPS filed a lawsuit in Federal District Court for the Southern District of California for our failure to designate critical habitat for the five carbonate plants (*California Native Plant Society* v. *Berg, et al.,* 00CV1207–L (LSP)). On April 27, 2001, the Court vacated our August 24, 1994, ''not prudent'' determination for critical habitat and ordered us to reevaluate its prudency, and if prudent to complete a proposed rule by January 31, 2002. The Court further ordered us to publish a final critical habitat designation on or before September 30, 2002. This proposed critical habitat determination has been drafted in compliance with the aforementioned court order.

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 species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection for lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that lack a Federal nexus, critical habitat designation would not afford any additional protections under the Act with respect to such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides for the essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will attempt to not designate areas that lack all primary constituent elements, as defined at 50 CFR 424.12(b), that provide for the essential life cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994, provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available (59 FR 34271). It requires us, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the section 9 of the Act prohibitions, 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In our final listing rule we concluded that the designation of critical habitat for the five carbonate plants was not prudent, explaining that such designation likely would increase the degree of threat from vandalism, collection, or other human activities (59 FR 43652).

The five carbonate plants may be vulnerable to vandalism, collection, or other human activities. In the final rule to list the four plants from southwestern California and Baja California, Mexico (63 FR 54938), we indicated that threats to listed plants might be exacerbated by the publication of critical habitat maps and further dissemination of location information. We also documented increases in collections of other sensitive species after listing actions (an increase in the collection of plants following the proposed listing of the six mountain plants from southern California) (63 FR 49006). Recently, we have even determined that designation of critical habitat is not prudent for one species (the rock gnome lichen) because it would likely increase the threat from collection, vandalism, or habitat degradation and destruction, both direct and inadvertent (66 FR 51445). However, at this time, we do not have site-specific evidence throughout the limited range of the carbonate plants documenting the vandalism or collection of these species, nor do we have evidence of an increase in threats due to illegal mining or other human activities following the listing of the five carbonate plants. There has been one known instance of illegal mining that was apparently an isolated incident (S. Eliason, pers. comm., 2001). Since then, there has been cooperative participation in the CHMS involving the SBNF, the Service, the BLM, and local stakeholders including mining interests. Maps with detailed, site-specific locations of the five carbonate plants have been used during meetings for the CHMS. Since this time, there have been no known additional instances of illegal mining. Therefore, it does not appear that the dissemination of distributional information of the five carbonate plants has led to an increase in the nature or degree of threats. Because of the cooperative participation in the CHMS, we do not expect that the identification of critical habitat will substantially increase the degree of threat to these species by vandalism, collection, or other human activities (*e.g.*, illegal mining).

There may be some educational or informational benefits to designating critical habitat. Critical habitat may be used as a tool to help identify areas within the range of the five carbonate plants essential for their conservation. For example, designation of critical habitat on non-Federal lands may provide some educational benefit by formally identifying on a range-wide basis those areas essential to the conservation of these species and, therefore, areas that are likely to be the focus of recovery efforts. Also, while a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation process, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances when a section 7 consultation would be triggered only if critical habitat is designated (for example, if we designated unoccupied habitat or if occupied habitat became unoccupied).

Based on our discussion above, we now determine that the designation of critical habitat is not likely to increase the nature and degree of threats due to vandalism, and in fact, there may be some additional conservation benefits to designating critical habitat on lands essential to the conservation of the five carbonate plants. Additionally, this proposed critical habitat may help focus efforts in the development of the CHMS and revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan. Therefore, in accordance with our regulations (50 CFR 424.12(a)(1)), we now determine that it is prudent to propose the designation of critical habitat for the five carbonate plants: *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana.*

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the five carbonate plants. This information included data from aerial photography (1995 Digital Orthorectified Quarter Quadrangles (DOQQ) and 2000 SPOT (*Systeème Pour l'Observation de la Terre*) satellite imagery); the SBNF Carbonate Species Suitable Habitat Models (S. Redar and S. Eliason, *in litt.* 2001); species location data from the SBNF, draft CHMS, and CNDDB (2001); the final listing rule (59 FR 43652), information in species background sections (USFWS 2001a, *in prep.*) being prepared for the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan; research and survey observations published in peer-reviewed articles; regional GIS coverages (*e.g.,* soils, occurrence data, vegetation, land ownership, and elevation); project-specific and other miscellaneous reports submitted to us; additional information from the BLM regarding a section 7 consultation (1–8–01–F–18) on the effects of the California Desert Conservation Area Plan (CDCA) on 10 plant species (BLM, *in litt.* 2001); a section 7 consultation with the SBNF on various ongoing and related activities affecting carbonate habitats (USFWS 2001b); discussions with representatives of the SBNF and botanical and other knowledgeable experts; and geologic map coverage of the Cushenbury Canyon area. We also visited portions of the carbonate belt in the northeastern San Bernardino Mountains, San Bernardino County, California within the SBNF. We concentrated our analysis on those areas with known occurrences for each of these species.

The number of individuals of each carbonate plant species fluctuates temporally (over time) and spatially (over an area) (Tierra Madre 1992; Krantz 1994; Neel 2000; CNDDB 2001). Population estimates from different time periods and surveyors also vary in precision and accuracy. Therefore, comparing these data may yield misleading estimates of the number of individuals in a given area (Neel 2000). Additionally, the mapped polygons associated with various groupings of the carbonate plants have varied from year to year and surveyor to surveyor (Tierra Madre 1992; Krantz 1994; Neel 2000; CNDDB 2001). Therefore, estimates of the number of individuals are not given in this document.

Names associated with the various groupings of carbonate plants also differ (*e.g.,* population, aggregate occurrence (grouped occurrences), element

occurrence (as used by the CNDDB), and point location (which describes a detailed mapping area used by the SBNF)) (59 FR 43652, Neel 2000, CNDDB 2001)). For the purposes of determining areas essential to the conservation of the carbonate plants, we grouped many of the site-specific localities identified by the CNDDB and the SBNF. This grouping allowed us to analyze the site-specific observations of the individual plants and the biological and ecological dynamics of these groupings, such as seed banks, connectivity and gene flow, and pollinator and seed dispersal vectors. The groupings also allowed for ease in the description, mapping, and definitions of legal boundaries. Consequently, we refer to each of these groupings as an ''occurrence.''

After analyzing all of the occurrence data from the CNDDB, the final listing rule, SBNF, and additional scientific and commercial sources, we grouped *Astragalus albens* into 19 occurrences, *Erigeron parishii* into 27 occurrences, *Eriogonum ovalifolium* var. *vineum* into 28 occurrences, *Lesquerella kingii* ssp. *bernardina* into 2 occurrences, and *Oxytheca parishii* var. *goodmaniana* into 19 occurrences. We are proposing to designate all or portions of 19 *A. albens* occurrences, 27 *Erigeron parishii* occurrences, 28 *Eriogonum ovalifolium* var. *vineum* occurrences, portions of both *L. kingii* ssp. *bernardina* occurrences, and all or portions of 18 *O. parishii* var. *goodmaniana* occurrences. We are not including one of the *O. parishii* var. *goodmaniana* occurrences because the area is considered to be too degraded and, therefore, not essential to the conservation of the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species (not all of which apply to plants). All areas proposed as critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* are within their respective historical ranges and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

Habitat components that are essential for each of the five carbonate plants are primarily found in, but not limited to, pinyon woodland, pinyon-juniper woodland and forests, Joshua tree woodland, white fir forests, subalpine forest, canyon live oak woodlands and forests, and blackbush scrub vegetation communities in the San Bernardino Mountains. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow for and maintain gene flow between sites through pollinator activity and seed dispersal mechanisms; (3) areas that provide basic requirements for growth such as water, light, minerals; and (4) areas that support pollinators and seed dispersal vectors.

The following are important to the conservation of the five carbonate plants: the conservation and management of existing population sites (USFWS 1997); the conservation and management of suitable habitat that contains micro-habitat sites that are not known to be currently occupied to maintain equilibrium between naturally occurring local extirpations and colonizations (Harrison *et al.* 2000); the protection and maintenance of upslope or upstream geologic features that provide the necessary materials to replace the soils continually lost to natural processes (65 FR 77178); the conservation and connectivity of native habitat between these occurrences to allow and maintain gene flow between sites through pollinator activity and seed dispersal mechanisms (66 FR 32052); the conservation and maintenance of sites for the survival of pollinators and seed dispersal agents (66 FR 32052); the conservation of suitable micro-habitat sites that could be colonized to allow a population to expand and contract, or maintain its normal metapopulation dynamics (Harrison *et al.* 2000); and the maintenance of normal ecological functions within all of these sites. The small fragmented range of each of these species, coupled with the other limiting ecological factors that adversely affect the chances of species survival (*e.g.,* habitat specialist, short reproductive lifespan), makes them especially vulnerable to natural and human caused effects (*e.g.,* non-native species, wildfire, livestock grazing, forest product harvesting, and mining) (Burgman *et al.,* 2001).

Based on our current knowledge of these species, the primary constituent elements of critical habitat for each species is listed below and consist of, but are not limited to:

Astragalus albens

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on hillsides or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Erigeron parishii

(1) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover.

Eriogonum ovalifolium var. *vineum*

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Lesquerella kingii ssp. *bernardina*

(1) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Oxytheca parishii var. goodmaniana

(1) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

Criteria Used To Identify Critical Habitat

The downlisting and delisting sections of the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS 2001c, *in prep.*) for the five carbonate plants, in concert with the draft CHMS, identify the specific recovery needs of these species and facilitated the identification of areas essential to their conservation. The draft recovery plan identifies lands as essential for the long-term conservation of the carbonate plants that: (1) Contain source occurrences that must be stabilized to recover the species; (2) include habitats that were part of a historical population distribution adjacent to occupied areas and are needed for the expansion and stability of additional occurrences; and (3) provide landscape connectivity between occurrences that are required to maintain genetic exchange and the natural processes of extirpations and colonizations. To recover the carbonate plants to the point where they can be downlisted or delisted, it is essential to preserve the species' genetic diversity, as well as their habitat.

During the development of the programmatic consultation for the four southern California National Forests (USFWS 2001d) and the draft CHMS, the SBNF delineated the distribution of each of the five carbonate species and developed a model of potential suitable habitat based on geology, soil substrates, elevations, and vegetative plant communities. The SBNF ranked the relative importance of the known occurrences of carbonate plants by evaluating the size, density, location, configuration, associated species, defensibility of each occurrence, and the overall quality of the supporting habitat. Priority was also given to occurrences that maintained the ecological and geographical variability of the species (*e.g.,* highest and lowest in elevation, westernmost and easternmost in distribution) (S. Eliason, *in litt.* 2001). We used the distribution and occurrence data, modeled suitable habitat maps, and the occurrence ranking information to determine habitat areas essential to the conservation of the five carbonate plants. We used 1996 and 2000 aerial photography to remove areas with (1) Urban development; (2) active mining; and (3) other current disturbances. The 1996 imagery provided finer 1-meter resolution, while the 2000 imagery provided more recent information, but at a lower resolution. We reviewed previous section 7 consultations for the carbonate plants to remove any additional lands that were previously determined to be non-essential. The boundaries were refined to provide: (1) Adequate seed bank habitat, (2) micro-habitat sites to maintain equilibrium between naturally occurring local extirpation and colonization events, (3) connectivity of native habitat to maintain gene flow between sites through pollinator activity and seed dispersal, (4) upslope or upstream geologic substrates that provide the necessary materials to replace the soils which are continually lost to natural processes, and (5) sites for the survival of pollinators and seed dispersal agents. To map these essential lands, we overlaid them with a 100-m Universal Transverse Mercator (UTM) grid. Because the grid captured additional non-essential lands, we then evaluated all grid cells adjacent to actively disturbed areas and eliminated grid cells where either the entire cell or the majority of the cell was within a disturbed area. Cells that had documented occurrences of the carbonate plants were retained even if the majority of the cell was disturbed.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, active mines, and lands unlikely to contain the primary constituent elements essential for the conservation of each of the five carbonate plants. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of non-essential lands included in our designation. Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this proposed rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or the primary constituent elements in adjacent critical habitat.

The proposed critical habitat units described below constitute our best assessment of areas that are essential for the species' conservation. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of the mapping units may be refined.

Critical Habitat Proposal

The acreage of proposed critical habitat land ownership is shown in Table 1.

TABLE 1.—PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1].]

Species	Federal [2]	Private	Total
Astragalus albens	1,565 ha (3,870 ac)	200 ha (495 ac)	1,765 ha (4,365 ac)
Erigeron parishii	1,330 ha (3,280 ac)	460 ha (1,140 ac)	1,790 ha (4,420 ac)
Eriogonum ovalifolium var. *vineum*	2,440 ha (6,025 ac)	375 ha (930 ac)	2,815 ha (6,955 ac)
Lesquerella kingii ssp. *bernardina*	405 ha (1,005 ac)	10 ha (20 ac)	415 ha (1,025 ac)
Oxytheca parishii var. *goodmaniana*	1,085 ha (2,675 ac)	190 ha (475 ac)	1,275 ha (3,150 ac)
Total [3]	4,565 ha (11,280 ac)	770 ha (1,900 ac)	5,335 ha (13,180 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Federal lands include SBNF and BLM lands.

[3] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

The proposed critical habitat areas described below constitute our best assessment of the areas essential for the conservation of each of the five carbonate plants. The proposed critical habitat for each species is considered to be occupied by either standing plants or seeds as part of the seed bank and contains one or more of their primary constituent elements. We propose to designate approximately 5,335 ha (13,180 ac) of land as critical habitat for the five carbonate plants. The lands proposed as critical habitat have been divided into three critical habitat units: the Northeastern Slope, Bertha Ridge, and Sugarlump Ridge. The Northeastern Slope Unit contains *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* The Bertha Ridge Unit contains *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina.* The Sugarlump Ridge Unit contains *L. kingii* ssp. *bernardina.* Lands proposed as critical habitat are under Federal and private ownership. Federal lands include areas owned or managed by the SBNF and BLM.

A brief description of each unit and reasons for proposing to designate it as critical habitat are presented below.

Unit 1: Northeastern Slope Unit, San Bernardino County, California (4,850 ha (11,980 ac))

The Northeastern Slope Unit includes 115 separate polygons (subunits) around essential occurrences of the carbonate plants. The unit extends from White Mountain at the western edge to Rattlesnake Canyon at the eastern edge, a distance of approximately 40 km (25 mi). The lands within this unit contain the majority of the carbonate substrates in the carbonate belt that spans the north to northeastern slope of the San Bernardino Mountains. This unit contains four of the five carbonate plants: *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.*

This unit contains the vast majority of the known ranges of each of these four carbonate plants, including 17 of the 19 *Astragalus albens* occurrences, 22 of the 27 *Erigeron parishii* occurrences, 22 of the 28 *Eriogonum ovalifolium* var. *vineum* occurrences, and 18 of the 19 *Oxytheca parishii* var. *goodmaniana* occurrences.

This unit contains occurrences of the carbonate plants that the SBNF ranked as very important for their survival and conservation. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of (1) a large number of core occurrences and (2) the majority of the remaining additional occurrences of each of these four carbonate plants are necessary for their downlisting and/or delisting.

The persistence of metapopulation species, including the carbonate plants, depends on the combined dynamics of local extirpations and colonizations by dispersal (Given 1994; Hanski 1999; Hanksi and Gilpin 1991; McCullough 1996). Every proposed occurrence in this unit is important to maintain the natural metapopulation dynamics of local extirpation and colonization events that are necessary for the conservation of the species. Every proposed carbonate plant occurrence is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events such as have been documented in populations of five plants restricted to serpentine seeps in Napa and Solano Counties, California (Harrison *et al.* 2000). Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduce the likelihood of extirpation events.

This unit is essential to the conservation of these four carbonate plants because: (1) The majority of their known occurrences are within this unit, (2) a number of important core occurrences are found in this unit, and (3) since there is one core occurrence for three of the plants and two core areas where the fourth is known to occur, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 1 by land ownership is shown in Table 2.

TABLE 2.—PROPOSED CRITICAL HABITAT FOR UNIT 1 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA.

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within[1].]

Species	BLM	USFS	Federal total	Private	Total
Astragalus albens	345 ha (850 ac)	1,220 ha (3,020 ac)	1,565 ha (3,870 ac)	200 ha (495 ac)	1,765 ha (4,365 ac)
Erigeron parishii	390 ha (960 ac)	940 ha (2,320 ac)	1,330 ha (3,280 ac)	460 ha (1,140 ac)	1,790 ha (4,420 ac)
Eriogonum ovalifolium var. *vineum*	175 ha (430 ac)	2,120 ha (5,230 ac)	2,290 ha (5,660 ac)	375 ha (930 ac)	2,665 ha (6,590 ac)
Oxytheca parishii var. *goodmaniana*	35 ha (85 ac)	1,050 ha (2,590 ac)	1,085 ha (2,675 ac)	190 ha (475 ac)	1,275 ha (3,150 ac)
Total[2]	640 ha (1,585 ac)	3,450 ha (8,515 ac)	4,090 ha (10,100 ac)	760 ha (1,880 ac)	4,850 ha (11,980 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Unit 2: Bertha Ridge Unit, San Bernardino County, California (275 ha (685 ac))

The Bertha Ridge Unit includes four separate polygons encompassing essential occurrences of the carbonate plants. This unit is located on the north side of Big Bear Lake adjacent to Big Bear City, California. It is near the east end of Bertha Ridge on its south facing slope. The majority of lands within this unit contain soils derived from carbonate substrates (particularly dolomite) that are essential to the survival and conservation of both carbonate plant species. This unit contains essential core occurrences of two of the five carbonate plants: *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina*.

This unit contains one of the two known *Lesquerella kingii* ssp. *bernardina* occurrences. It is an essential core occurrence that may be large enough to maintain the natural dynamics of local extirpation and colonization events. This unit also contains a geographically distinct *Eriogonum ovalifolium* var. *vineum* occurrence. This is the only *E. ovalifolium* var. *vineum* occurrence found on soils primarily derived from dolomite substrates and may contain genetic characteristics essential to overall long-term conservation of the species.

Each of these occurrences have been identified by the SBNF as being very important core occurrences for the survival and conservation for each carbonate plant species. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of each of the occurrences of these two carbonate plants are necessary for their downlisting and/or delisting.

The core occurrences of the two carbonate plants in this unit are essential as sources for the re-colonization events (*e.g.*, seed dispersal) that are necessary to maintain the natural dynamics of local extirpation and colonization events. Every proposed carbonate plant occurrence in this unit is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events. Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduces the likelihood of extirpation events and/or extinction.

This unit is essential to the conservation of both of these carbonate species because: (1) It contains an essential core occurrence of each species, (2) this unit contains roughly half of the known range of *Lesquerella kingii* ssp. *bernardina*, and (3) since there are only two core areas for each of the two plants within this unit, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 2 by land ownership is shown in Table 3.

TABLE 3.—PROPOSED CRITICAL HABITAT FOR UNIT 2 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA.

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within.[1]]

Species	BLM	USFS	Federal total	Private	Total
Eriogonum ovalifolium var. *vineum*	0 ha (0 ac)	150 ha (365 ac)	150 (365 ac)	0 ha (0 ac)	150 ha (365 ac)
Lesquerella kingii ssp. *bernardina*	0 ha (0 ac)	195 ha (490 ac)	195 ha (490 ac)	10 ha (20 ac)	205 ha (510 ac)
Total[2]	0 ha (0 ac)	265 ha (665 ac)	265 ha (665 ac)	10 ha (20 ac)	275 ha (685 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Unit 3: Sugarlump Ridge Unit, San Bernardino County, California (210 ha (515 ac))

The Sugarlump Ridge Unit includes two separate polygons encompassing an essential core occurrence of the *Lesquerella kingii* ssp. *bernardina*. This unit is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge unit. The soils in this unit are primarily derived from dolomite instead of limestone. *Lesquerella kingii* ssp. *bernardina* is the only carbonate plant in this unit.

This unit contains one of the two known *Lesquerella kingii* ssp. *bernardina* occurrences. This occurrence has been identified by the SBNF as being a very important core occurrence for the survival and conservation of *L. kingii* ssp. *bernardina*. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of this occurrence is necessary for its downlisting or delisting.

The core *Lesquerella kingii* ssp. *bernardina* occurrence in this unit is essential as a source for the re-colonization events (*e.g.*, seed dispersal) that are necessary to maintain the natural metapopulation dynamics of local extirpation and colonization events. Every proposed occurrence of this carbonate plant is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events. Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduces the likelihood of extirpation events.

This unit is essential to the conservation of *Lesquerella kingii* ssp. *bernardina* because: (1) It contains one of the two known occurrences of this species, (2) this unit contains roughly half of the known range of *L. kingii* ssp. *bernardina*, and (3) since there area only two core areas where this plant is know to occur, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 3 by land ownership is shown in Table 4.

TABLE 4.—PROPOSED CRITICAL HABITAT FOR UNIT 3 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within.[1]]

Species	BLM	USFS	Federal total	Private	Total
Lesquerella kingii ssp. *bernardina*	0 ha (0 ac)	210 ha (515 ac)	210 ha (515 ac)	0 ha (0 ac)	210 ha (515 ac)
Total[2]	0 ha (0 ac)	210 ha (515 ac)	210 ha (515 ac)	0 ha (0 ac)	210 ha (515 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. 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 action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also

provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the 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.

Activities on Federal lands that may affect *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum*, *Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* 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 U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) 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 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 destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for the conservation of any of the five carbonate plants. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or clearing *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning, mechanical, chemical, or other means (*e.g.*, grubbing, grading, grazing, woodcutting, construction, road building and maintenance, mining, herbicide application, and weed abatement);

(2) Activities that appreciably degrade *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), including, but not limited to, mining, fire management, livestock grazing, clearing, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy/intense recreational use; and

(3) Appreciably decreasing habitat value or quality through indirect effects (*i.e.*, upslope or upstream removal of carbonate substrates, or significant watershed alteration).

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

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 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species or destroy 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, and actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of 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 almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Because all of the units we are proposing are occupied by either standing plants or seeds as part of the seed bank of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana*, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Regulation of activities affecting waters of the U.S. by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural or mining activities by Federal agencies;

(4) Development on private lands requiring permits from other Federal agencies;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Authorization of Federal grants or loans;

(7) Activities funded by the Environmental Protection Agency, Department of Energy, or any other Federal agency; and

(8) Hazard mitigation and post-disaster repairs funded by the FEMA.

Relationship to Habitat Conservation Plans and Other Planning Efforts

Exclusions Under Section 4(b)(2)

Only one HCP, *Habitat conservation plan for the federally threatened desert tortoise, Cushenbury sand and gravel quarry, San Bernardino, California* (Lilburn Corporation 1994), has been completed within the area where these five carbonate plants occur. This HCP

addresses the federally listed as threatened desert tortoise (*Gopherus agassizii*). While *Erigeron parishii* occurs within the area addressed by this HCP, neither this species nor any other carbonate plant addressed in this proposal is covered under this HCP. In the event that future HCPs are developed within the boundaries of designated critical habitat in which one or more of the carbonate plants is included as a covered species, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for their conservation by either directing development and habitat modification to non-essential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify critical habitat. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the five carbonate plants. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat preserves. We fully expect that any HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal to be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to these species due to designation;

(2) Specific information on the amount and distribution of carbonate plant habitat, and what habitat is essential to the conservation of these species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitats;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana*, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, plant-watching/botanizing, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or

reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual 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. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* were listed as endangered or threatened species in 1994. In fiscal years 1994 through 2001, we have conducted, or are in the process of conducting, an estimated seven formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii* ssp. *bernardina*, or *O. parishii* var. *goodmaniana.*

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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. Based upon our experience with the species and its habitat requirements, we conclude that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 5). Accordingly, the designation of critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* is not anticipated to have any significant incremental impacts on actions proposed by Federal agencies or non-Federal persons that receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act: see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, or *Oxytheca parishii* var. *goodmaniana* since the listing in 1994. The designation of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agencies' actions.

(c) This proposed rule, if made final, is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the critical habitat designation will have any significant incremental effects.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 5.—IMPACTS OF ASTRAGALUS ALBENS, ERIGERON PARISHII, ERIOGONUM OVALIFOLIUM VAR. VINEUM, LESQUERELLA KINGII SSP. BERNARDINA, AND OXYTHECA PARISHII VAR. GOODMANIANA LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities the Federal Government carries out such as removing, thinking, or destroying *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application) and appreciably decreasing habitat value or quality through indirect effects (*e.g.,* upslop or upstream removal of carbonate substrates, significant watershed alteration).	May result in a limited increase in the number of section 7 consultations (re-initiations or new). Since critical habitat is occupied, few to no additional activities would be affected by critical habitat.

TABLE 5.—IMPACTS OF ASTRAGALUS ALBENS, ERIGERON PARISHII, ERIOGONUM OVALIFOLIUM VAR. VINEUM, LESQUERELLA KINGII SSP. BERNARDINA, AND OXYTHECA PARISHII VAR. GOODMANIANA LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of Activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application) and appreciably decreasing habitat value or quality through indirect effects (*e.g.*, upslope or upstream removal of carbonate substrates, significant watershed alteration that require a Federal action (permit, authorization, or funding)).	May result in a limited increase in the number of section 7 consultations (re-initiations or new). Since critical habitat is occupied, few to no additional activities would be affected by critical habitat.

[1] This column represents the activities potentially affected by listing the *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* as endangered or threatened species (August 24, 1994, 59 FR 43652) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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 proposed rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for making this certification.

We must determine whether the proposed rulemaking will affect a substantial number of small entities. 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 121.201). 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. If the proposed rulemaking will affect a substantial number of small entities, we must determine if there will be a significant economic impact on them.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development; grazing; mining; timber harvesting; low-, moderate-, and high-impact recreation; placement of communication towers; peak energy production plants). We apply the ''substantial number'' test individually to each industry to determine if a certification of no significant effect is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the proposed critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana.* If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger significant additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger significant additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. Since the listing of

the five carbonate plants in August 1994 (59 FR 43652), we have completed approximately six consultations involving the carbonate plants. Of these, four were with the USFS, one was with the BLM, and one was an intra-Service consultation on the issuance of a 10(a)(1)(B) permit. Due to this consultation history we know what land uses have triggered consultations in the past and we can estimate land uses that may trigger consultations in the future. Land uses that have triggered these consultations include: Livestock grazing; wild burro management; forest road and trail use, maintenance, and construction; special use permits (recreation and non-recreation); forest product harvesting (*e.g.,* fuelwood collection) and commercial mining (limestone).

We believe that the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities. We analyzed the consultations and attempted to determine which entities are involved in the consultations. There were six grazing permits on the SBNF as of 1998. Since that time, four areas with grazing permits have been closed. Of the two remaining grazing permits, only one is within areas proposed as critical habitat. This single grazing permit is not affecting a substantial number of small entities. The SBNF uses its own employees for wild burro management. No small entities are involved with this activity.

The SBNF separates special use permits (SUP) into two categories: Recreation and non-recreation. The recreation SUPs are usually of short duration and the majority of activities covered by them occur on existing roads and trails and will not be affected by critical habitat. Several times a year, the SBNF will issue SUPs that involve activities off-trail or off-road; however, several years ago the SBNF stopped issuing SUPs for activities that would occur in carbonate plant habitat. Therefore, we do not anticipate that this critical habitat designation will affect a substantial number of small entities involved in recreation activities. The non-recreation SUPs are generally long-term. These SUPs are issued for major projects that occur on Forest Service lands (*i.e.,* power lines, pipelines, roads, sewer lines, and other utilities). These SUPs generally involve entities such as Verizon Wireless, Southern California Edison Company, Pacific Gas and Electric, and California Department of Transportation. The vast majority of these SUPs are for activities that occur outside of carbonate plant habitat. Since the majority of these entities are not considered small and the majority of these activities occur outside of carbonate plant habitat, critical habitat is not anticipated to affect a substantial number of small entities involved in major infrastructure development.

Forest product harvesting involves activities such as fire wood collecting, the clearing of deadwood in post-fire areas, and commercial seed collecting. The SBNF stopped allowing these activities in areas with carbonate plant habitats in 1998, but still allows them to occur in non-carbonate plant habitat. Therefore, critical habitat will not affect a substantial number of small entities that rely on forest product harvesting activities.

The SBNF has records of over 200 mining claims in carbonate plant habitats. These claims are held by entities ranging from individuals, to small clubs (*i.e.,* hobby gold mining clubs), to large multi-national corporations (*e.g.,* Mitsubishi). If mines on these claims will have significant ground disturbing activities, they are required to complete a Plan of Operation (PoO; this is the standard acronym used by the BLM and USFS as per 36 CFR 2800). Significant ground-disturbing activities is defined as 2 ha (5 ac) by the BLM and discretional to the Forest Officer for the USFS. Entities that will not have significant ground-disturbing activities are not required to complete a PoO, and thus these mining activities would not likely trigger any section 7 consultation requirement. To date, only three entities (Mitsubishi, Omya, and Specialty Minerals, Inc.) have filed PoOs with the SBNF, and none qualify as a small entity. Approximately 134 (63%) of the claims are owned or leased by entities that do not qualify as a small entity. The remaining 79 (37%) of the claims are either idle or have not submitted a PoO. Due to the significant cost of limestone mining, we do not expect individual claimants or other small entities to mine the claims without either associating with a large business or leasing their claim to a large business. Therefore, critical habitat will not affect a substantial number of small entities that rely on significant ground-disturbing activities such as mining.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. We have only proposed to designate occupied habitat, therefore, we do not anticipate that critical habitat will trigger significant additional review of Federal activities under section 7 of the Act. Therefore, for the purposes of this review and certification under the RFA, we are assuming that any future consultations in the area proposed as critical habitat will be due jointly to both the presence of at least one of the five listed carbonate plants and its corresponding critical habitat. Because of our consultation history, we project that the future land uses in this area will be similar to the land uses that have occurred since 1994. With the development and completion of the CHMS (which will focus mining and other activities to minimize the threats within carbonate habitats), we anticipate that there will not be any additional land uses within the area proposed as critical habitat for the carbonate plants. Of all of these activities, we only expect that one additional small entity may be affected by this designation. We anticipate that one entity, not associated with a major business entity, will request a PoO approval. This entity will first have to comply with the National Environmental Policy Act and a section 7 consultation may be required, because the area under consideration is currently occupied by one or more of the five listed carbonate plants. We are not aware of any other small entities that will be conducting activities within the area proposed for designation of critical habitat for the carbonate plants. We are not aware of a significant number of future activities that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an

exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives, because none of our previous consultations on any of the five carbonate plants has required reasonable and prudent alternatives. The kinds of actions that may be identified in future reasonable and prudent alternatives are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. They include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not significantly affect a substantial number of small entities because most of the entities that conduct activities in carbonate plant habitat either have already consulted with us or they do not qualify as a small entity. Additionally, we are working towards a management plan with the other stakeholders (*e.g.,* SBNF, BLM, mining interests) for the carbonate plant habitat.

This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We anticipate that the kinds of reasonable and prudent alternatives we would provide can usually be implemented at very low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* will not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis is not required for this proposed designation.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we will determine whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because the area within the proposed critical habitat is mined for limestone (for use in pharmaceuticals and aggregate production) and not energy producing minerals (*e.g.,* coal, petroleum products), this proposed rule is not expected to significantly affect energy supplies, distribution, or use; this action is not a significant energy action; and no Statement of Energy Effects is required. Additionally, the area proposed as critical habitat is occupied by listed species, therefore, any required section 7 consultation by a Federal agency undertaking an action in this area would initially be triggered by the presence of the listed species and not solely by this proposed designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that their proposed activities require Federal funds, permits or other authorization. Activities with a Federal nexus may not destroy or adversely modify critical habitat. However, as discussed previously, these activities are currently subject to equivalent restrictions as a result of the listing of the species, and no further restrictions are anticipated.

(b) This rule, as proposed, will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing to designate a total of 5,336 ha (13,180 ac) of lands in San Bernardino County, California, as

critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* in a takings implication assessment. The takings implication assessment concludes that this proposed rule does not pose a significant takings implication for lands proposed as critical habitat for these five carbonate plants.

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 policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While 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 Department of the Interior's 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 are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* because no Tribal lands support populations or provide essential habitat for the five carbonate plants. Therefore, critical habitat for *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii ssp. bernardina,* or *O. parishii* var. *goodmaniana* has not been proposed on Tribal lands.

References Cited

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

Author

The primary author of this proposed rule is Mark A. Elvin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus albens	Cushenbury milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	548	17.96(b)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Erigeron parishii	Parish's daisy	U.S.A. (CA)	Asteraceae—Sunflower.	T	548	17.96(b)	NA
*	*	*	*	*	*		*
Eriogonum ovalifolium var. *vineum*.	Cushenbury buckwheat.	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	548	17.96(b)	NA
*	*	*	*	*	*		*
Lesquerella kingii ssp. *bernardina*.	San Bernardino Mountains bladderpod.	U.S.A. (CA)	Brassicaceae—Mustard.	E	548	17.96(b)	NA
*	*	*	*	*	*		*
Oxytheca parishii var. *goodmaniana*.	Cushenbury oxytheca.	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	548	17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* under paragraph (a) by adding entries for *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii* ssp. *bernardina,* and *O. parishii* var. *goodmaniana* in alphabetical order by family under Asteraceae, Brassicaceae, Fabaceae, and Polygonaceae (respectively) to read as follows:

§ 17.96 Critical habitat—plants.

(a)

(2)* * *

(i)* * *

Family Asteraceae: *Erigeron parishii* (Parish's daisy)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Erigeron parishii* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

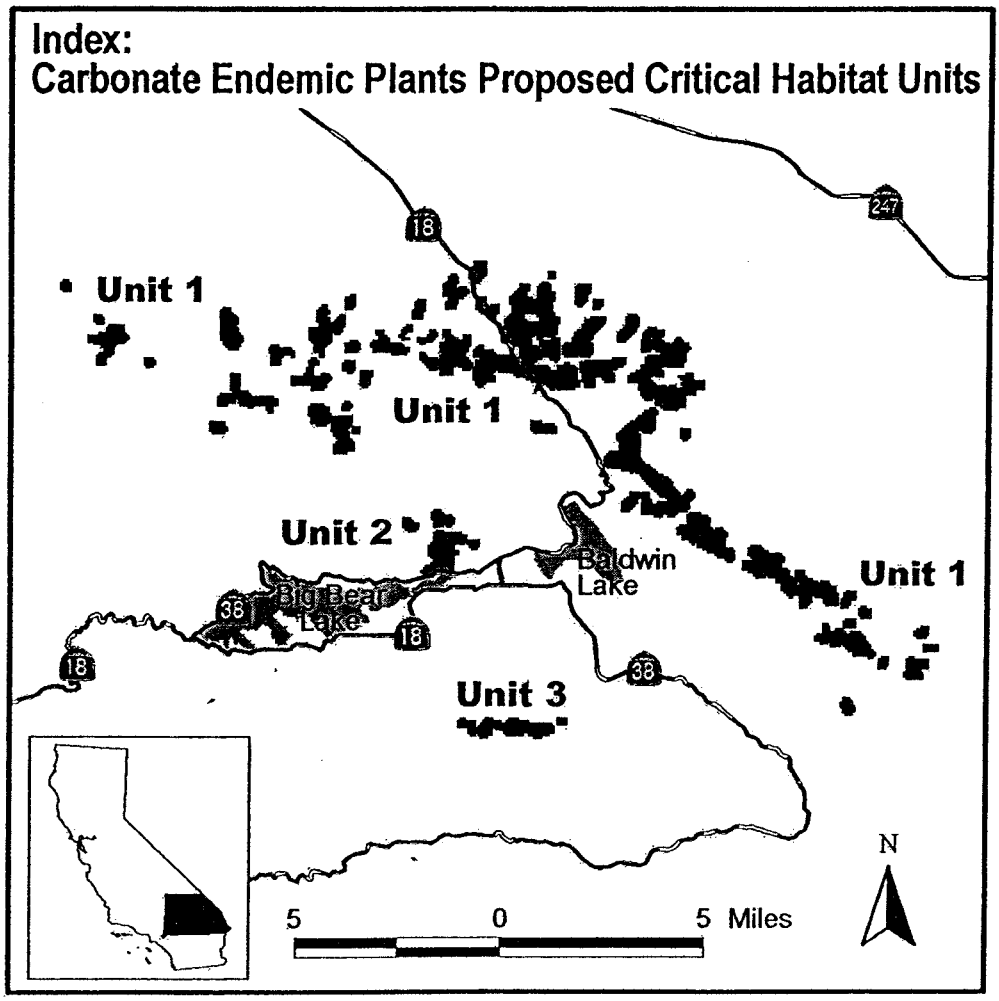
(*1*) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Map 1 follows. [index map]



(E) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 507200, 3802000; 507400, 3802000; 507400, 3801800; 507500, 3801800; 507500, 3801600; 507400, 3801600; 507400, 3801500; 507500, 3801500; 507500, 3801200; 507600, 3801200; 507600, 3801300; 507700, 3801300; 507700, 3801400; 507800, 3801400; 507800, 3801500; 507900, 3801500; 507900, 3801600; 508100, 3801600; 508100, 3801100; 508000, 3801100; 508000, 3800900; 507900, 3800900; 507900, 3800800; 507700, 3800800; 507700, 3800900; 507600, 3800900; 507600, 3801000; 507500, 3801000; 507500, 3800700; 507400, 3800700; 507400, 3800300; 507300, 3800300; 507300, 3799900; 507100, 3799900; 507100, 3800100; 506900, 3800100; 506900, 3800500; 506800, 3800500; 506800, 3800700; 506700, 3800700; 506700, 3801100; 507100, 3801100; 507100, 3801400; 507000, 3801400; 507000, 3801800; 507100, 3801800; 507100, 3801900; 507200, 3801900; and 507200, 3802000.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3802400; 508500, 3802400; 508500, 3801900; 508400, 3801900; 508400, 3801800; 508100, 3801800; 508100, 3802300; 508300, 3802300; and 508300, 3802400.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 509700, 3800500; 510200, 3800500; 510200, 3800200; 510100, 3800200; 510100, 3800100; 509700, 3800100; and 509700, 3800500.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 510300, 3801000; 510500, 3801000; 510500, 3800800; 510300, 3800800; and 510300, 3801000.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3802200; 511200, 3802200; 511200, 3801700; 511100, 3801700; 511100, 3801400; 510700, 3801400; 510700, 3801800; 510800, 3801800; 510800, 3802100; 510900, 3802100; and 510900, 3802200.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 511400, 3801000; 511600, 3801000; 511600, 3800900; 511700, 3800900; 511700, 3800700; 511600, 3800700; 511600, 3800600; 511500, 3800600; 511500, 3800500; 511200, 3800500; 511200, 3800400; 511000, 3800400; 511000, 3800500; 510900, 3800500; 510900, 3800600; 511000, 3800600; 511000, 3800700; 511300, 3800700; 511300, 3800800; 511400, 3800800; and 511400, 3801000.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 511800, 3800000; 512200, 3800000; 512200, 3799900; 512300, 3799900; 512300, 3799800; 512400, 3799800; 512400, 3799500; 512300, 3799500; 512300, 3799400; 511900, 3799400; 511900, 3799500; 511700, 3799500; 511700, 3799400; 511500, 3799400; 511500, 3799500; 511400, 3799500; 511400, 3799600; 511300, 3799600; 511300, 3799800; 511800, 3799800; and 511800, 3800000.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 512100, 3800700; 512400, 3800700; 512400, 3800600; 512500, 3800600; 512500, 3800400; 512600, 3800400; 512600, 3800300; 512700, 3800300; 512700, 3800100; 512600, 3800100; 512600, 3800000; 512300, 3800000; 512300, 3800300; 512200, 3800300; 512200, 3800200; 512100, 3800200; 512100, 3800100; 511900, 3800100; 511900, 3800200; 511800, 3800200; 511800, 3800400; 511900, 3800400; 511900, 3800500; 512100, 3800500; and 512100, 3800700.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 512200, 3803200; 512400, 3803200; 512400, 3803100; 512500, 3803100; 512500, 3802800; 512400, 3802800; 512400, 3802600; 512500, 3802600; 512500, 3802700; 512800, 3802700; 512800, 3802600; 512900, 3802600; 512900, 3802400; 512800, 3802400; 512800, 3802300; 512700, 3802300; 512700, 3802200; 512500, 3802200; 512500, 3802000; 512400, 3802000; 512400, 3801800; 512000, 3801800; 512000, 3802100; 512100, 3802100; 512100, 3802300; 511900, 3802300; 511900, 3802800; 512000, 3802800; 512000, 3802900; 512100, 3802900; 512100, 3803100; 512200, 3803100; and 512200, 3803200.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3802300; 513600, 3802300; 513600, 3802000; 513700, 3802000; 513700, 3801900; 513800, 3801900; 513800, 3802000; 514100, 3802000; 514100, 3801600; 514000, 3801600; 514000, 3801400; 513800, 3801400; 513800, 3801500; 513600, 3801500; 513600, 3801600; 513400, 3801600; 513400, 3801700; 513300, 3801700; 513300, 3801800; 513200, 3801800; 513200, 3802200; 513300, 3802200; and 513300, 3802300.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 515800, 3802900; 516000, 3802900; 516000, 3802800; 516100, 3802800; 516100, 3802500; 516300, 3802500; 516300, 3802200; 516000, 3802200; 516000, 3802000; 516100, 3802000; 516100, 3801900; 516200, 3801900; 516200, 3801700; 516300, 3801700; 516300, 3801500; 516400, 3801500; 516400, 3800800; 516300, 3800800; 516300, 3800700; 516000, 3800700; 516000, 3801300; 515900, 3801300; 515900, 3801400; 515800, 3801400; 515800, 3801600; 515700, 3801600; 515700, 3801700; 515100, 3801700; 515100, 3801800; 515000, 3801800; 515000, 3801500; 515100, 3801500; 515100, 3801200; 515000, 3801200; 515000, 3801100; 514900, 3801100; 514900, 3800700; 514400, 3800700; 514400, 3801000; 514300, 3801000; 514300, 3801400; 514400, 3801400; 514400, 3801500; 514500, 3801500; 514500, 3801600; 514600, 3801600; 514600, 3802100; 514700, 3802100; 514700, 3802400; 514800, 3802400; 514800, 3802600; 514900, 3802600; 514900, 3802800; 515300, 3802800; 515300, 3802500; 515200, 3802500; 515200, 3802300; 515400, 3802300; 515400, 3802200; 515500, 3802200; 515500, 3802100; 515600, 3802100; 515600, 3802700; 515700, 3802700; 515700, 3802800; 515800, 3802800; and 515800, 3802900.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 515600, 3801200; 515900, 3801200; 515900, 3800800; 515500, 3800800; 515500, 3801100; 515600, 3801100; and 515600, 3801200.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 514900, 3799900; 514900, 3800000; 515000, 3800000; 515000, 3800200; 514900, 3800200; 514900, 3800500; 515000, 3800500; 515000, 3800600; 515400, 3800600; 515400, 3800200; 515500, 3800200; 515500, 3799700; 515400, 3799700; 515400, 3799600; 516000, 3799600; 516000, 3799500; 516100, 3799500; 516100, 3799200; 516500, 3799200; 516500, 3799100; 516600, 3799100; 516600, 3798900; 516500, 3798900; 516500, 3798800; 516200, 3798800; 516200, 3798900; 516000, 3798900; 516000, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3799100; 515600, 3799100; 515600, 3799000; 515200, 3799000; 515200, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514100, 3799300; 514100, 3799400; 514000, 3799400; 514000, 3799300; 513600, 3799300; 513600, 3799400; 513500, 3799400; 513500, 3799600; 513600, 3799600; 513600, 3799700; 513500, 3799700; 513500, 3800000; 513600, 3800000; 513600, 3800100; 513700, 3800100; 513700, 3800200; 513900, 3800200; 513900, 3800000; 514700, 3800000; 514700, 3799900; and 514900, 3799900; excluding land bounded by 514900, 3799900; 514900, 3799700; 515000, 3799700; 515000, 3799900; and 514900, 3799900.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 517300, 3801000; 517800, 3801000; 517800, 3800600; 517600, 3800600; 517600, 3800300; 517500, 3800300; 517500, 3800200; 517000, 3800200; 517000, 3800700; 517100, 3800700; 517100, 3800800; 517200, 3800800; 517200, 3800900; 517300, 3800900; and 517300, 3801000.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3801600; 519500, 3801600; 519500, 3801500; 519600, 3801500; 519600, 3801100; 519500, 3801100; 519500, 3800900; 519400, 3800900; 519400, 3800800; 519300, 3800800; 519300, 3800700; 519200, 3800700; 519200, 3800600; 519100, 3800600; 519100, 3800500; 518800, 3800500; 518800, 3800900; 518900, 3800900; 518900, 3801000; 519000, 3801000; 519000, 3801100; 519100, 3801100; 519100, 3801500; 519200, 3801500; and 519200, 3801600.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3801100; 520300, 3801100; 520300, 3800700; 520100, 3800700; 520100, 3800600; 519900, 3800600; 519900, 3800700; 519800, 3800700; 519800, 3800900; 519900, 3800900; 519900, 3801000; 520000, 3801000; and 520000, 3801100.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 521100, 3800700; 521300, 3800700; 521300, 3800600; 521400, 3800600; 521400, 3800500; 521600, 3800500; 521600, 3800300; 521700, 3800300; 521700, 3800200; 521600, 3800200; 521600, 3800100; 521500, 3800100; 521500, 3800000; 521300, 3800000; 521300, 3799900; 521200, 3799900; 521200, 3799700; 521000, 3799700; 521000, 3799600; 520900, 3799600; 520900, 3799500; 520500, 3799500; 520500, 3799100; 520300, 3799100; 520300, 3799300; 520200, 3799300; 520200, 3799200; 520000, 3799200; 520000, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798600; 520800, 3798600; 520800, 3798700; 521500, 3798700; 521500, 3798800; 521300, 3798800; 521300, 3798900; 521700, 3798900; 521700, 3799000; 522000, 3799000; 522000, 3798900; 522100, 3798900; 522100, 3798700; 522000, 3798700; 522000, 3798600; 521900, 3798600; 521900, 3798400; 521500, 3798400; 521500, 3798100; 521300, 3798100; 521300, 3798000; 521200, 3798000; 521200, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798100; 520400, 3798100; 520400, 3798200; 520300, 3798200; 520300, 3798400; 520200, 3798400; 520200, 3798500; 520100, 3798500; 520100, 3798600; 519600, 3798600; 519600, 3798900; 519200, 3798900; 519200, 3799200; 519300, 3799200; 519300, 3799300; 519500, 3799300; 519500, 3799400; 519700, 3799400; 519700, 3799500; 519900, 3799500; 519900, 3799600; 520100, 3799600; 520100, 3799700; 520300, 3799700; 520300, 3799800; 520400,

3799800; 520400, 3799900; 520500, 3799900; 520500, 3800100; 520600, 3800100; 520600, 3800300; 520800, 3800300; 520800, 3800400; 520900, 3800400; 520900, 3800500; 521000, 3800500; 521000, 3800600; 521100, 3800600; and 521100, 3800700.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3797300; 519600, 3797300; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796600; 519300, 3796600; 519300, 3796500; 519500, 3796500; 519500, 3796400; 519600, 3796400; 519600, 3796100; 519700, 3796100; 519700, 3796000; 519600, 3796000; 519600, 3795400; 519300, 3795400; 519300, 3795500; 518500, 3795500; 518500, 3795900; 518800, 3795900; 518800, 3796000; 519000, 3796000; 519000, 3796100; 519100, 3796100; 519100, 3796200; 519200, 3796200; 519200, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796900; 518900, 3796900; 518900, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; and 519200, 3797300.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3797600; 520300, 3797600; 520300, 3797100; 520100, 3797100; 520100, 3797000; 520000, 3797000; 520000, 3796900; 519800, 3796900; 519800, 3797000; 519700, 3797000; 519700, 3797400; 519800, 3797400; 519800, 3797500; 520000, 3797500; and 520000, 3797600.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3797100; 521700, 3797100; 521700, 3796700; 521600, 3796700; 521600, 3796600; 521400, 3796600; 521400, 3796700; 521300, 3796700; and 521300, 3797100.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3794600; 519700, 3794600; 519700, 3794300; 519600, 3794300; 519600, 3794100; 519500, 3794100; 519500, 3794000; 519400, 3794000; 519400, 3793900; 519300, 3793900; 519300, 3793800; 519000, 3793800; 519000, 3794200; 519100, 3794200; 519100, 3794300; 519200, 3794300; 519200, 3794400; 519300, 3794400; and 519300, 3794600.

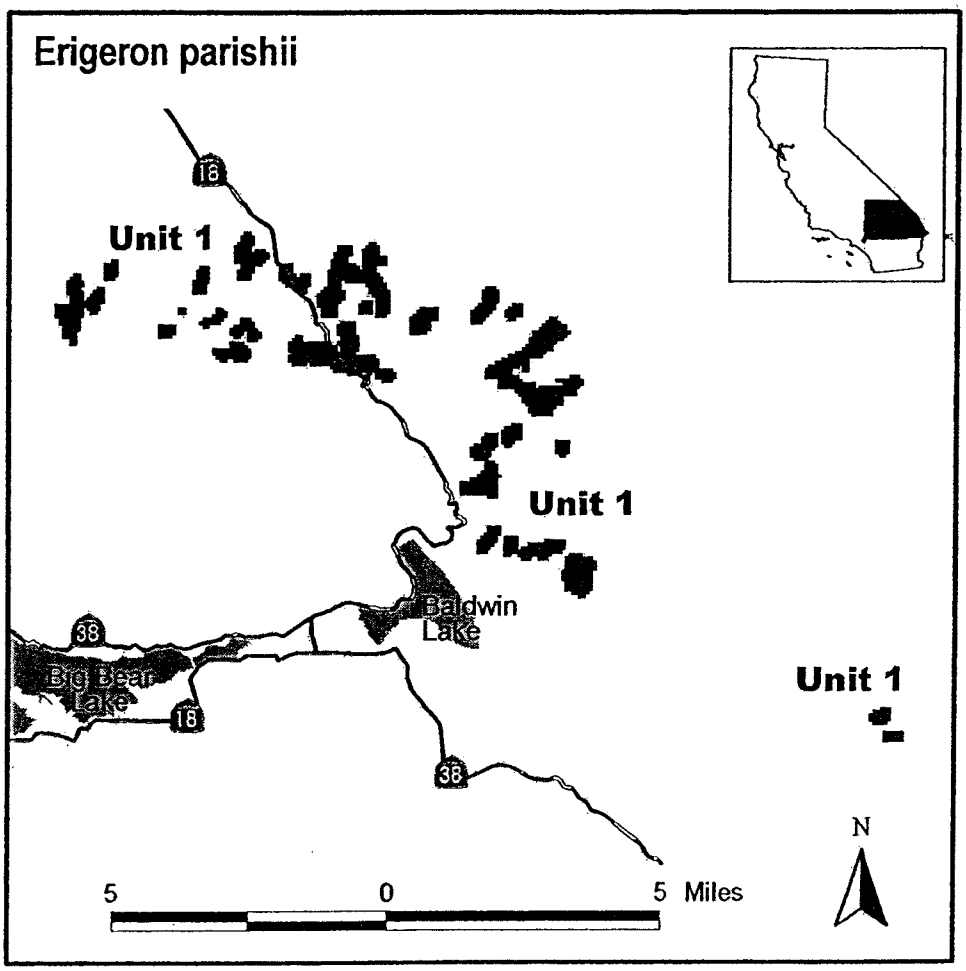
Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794300; 520200, 3794300; 520200, 3793900; 520300, 3793900; 520300, 3794000; 520500, 3794000; 520500, 3794100; 521000, 3794100; 521000, 3794200; 521600, 3794200; 521600, 3793900; 521500, 3793900; 521500, 3793800; 521200, 3793800; 521200, 3793700; 521100, 3793700; 521100, 3793600; 520800, 3793600; 520800, 3793700; 520600, 3793700; 520600, 3793600; 520300, 3793600; 520300, 3793700; 520200, 3793700; 520200, 3793800; 520000, 3793800; 520000, 3793700; 519800, 3793700; and 519800, 3794300.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 521700, 3793800; 522100, 3793800; 522100, 3793700; 522400, 3793700; 522400, 3793600; 522500, 3793600; 522500, 3793300; 522400, 3793300; 522400, 3792700; 522300, 3792700; 522300, 3792600; 522200, 3792600; 522200, 3792500; 522000, 3792500; 522000, 3792600; 521800, 3792600; 521800, 3792700; 521600, 3792700; 521600, 3793000; 521500, 3793000; 521500, 3793300; 521600, 3793300; 521600, 3793700; 521700, 3793700; and 521700, 3793800.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 530800, 3789300; 531100, 3789300; 531100, 3788900; 531000, 3788900; 531000, 3788800; 530600, 3788800; 530600, 3788900; 530500, 3788900; 530500, 3789100; 530600, 3789100; 530600, 3789200; 530800, 3789200; and 530800, 3789300.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 530900, 3788600; 531500, 3788600; 531500, 3788300; 530900, 3788300; and 530900, 3788600.

(*2*) Erigeron parishii Map follows.



Family Brassicaceae: *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains Bladderpod)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Lesquerella kingii* ssp. *bernardina*, are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Bertha Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California.

Subunit 2a: land bounded by the following UTM11 NAD27 coordinates (E, N): 510400, 3793600; 510700, 3793600; 510700, 3793500; 510800, 3793500; 510800, 3793400; 511000, 3793400; 511000, 3793100; 510900, 3793100; 510900, 3793000; 510600, 3793000; 510600, 3793100; 510500, 3793100; 510500, 3793200; 510400, 3793200; and 510400, 3793600.

Subunit 2b: land bounded by the following UTM11 NAD27 coordinates (E, N): 511600, 3793900; 511900, 3793900; 511900, 3793800; 512000, 3793800; 512000, 3793700; 512300, 3793700; 512300, 3793600; 512400, 3793600; 512400, 3793300; 512300, 3793300; 512300, 3793200; 512100, 3793200; 512100, 3793300; 512000, 3793300; 512000, 3793200; 511600, 3793200; 511600, 3793500; 511500, 3793500; 511500, 3793800; 511600, 3793800; and 511600, 3793900.

Subunit 2c: land bounded by the following UTM11 NAD27 coordinates (E, N): 511700, 3793100; 512000, 3793100; 512000, 3793000; 512200, 3793000; 512200, 3792700; 512100, 3792700; 512100, 3792500; 511900, 3792500; 511900, 3792300; 512600, 3792300; 512600, 3792100; 512400, 3792100; 512400, 3791400; 512100, 3791400; 512100, 3791500; 511900, 3791500; 511900, 3791400; 511700,

3791400; 511700, 3791300; 511600, 3791300; 511600, 3791200; 511200, 3791200; 511200, 3791400; 511100, 3791400; 511100, 3791500; 511200, 3791500; 511200, 3791600; 511300, 3791600; 511300, 3791700; 511600, 3791700; 511600, 3792300; 511500, 3792300; 511500, 3792500; 511600, 3792500; 511600, 3792600; 511700, 3792600; 511700, 3792700; 511600, 3792700; 511600, 3793000; 511700, 3793000; and 511700, 3793100.

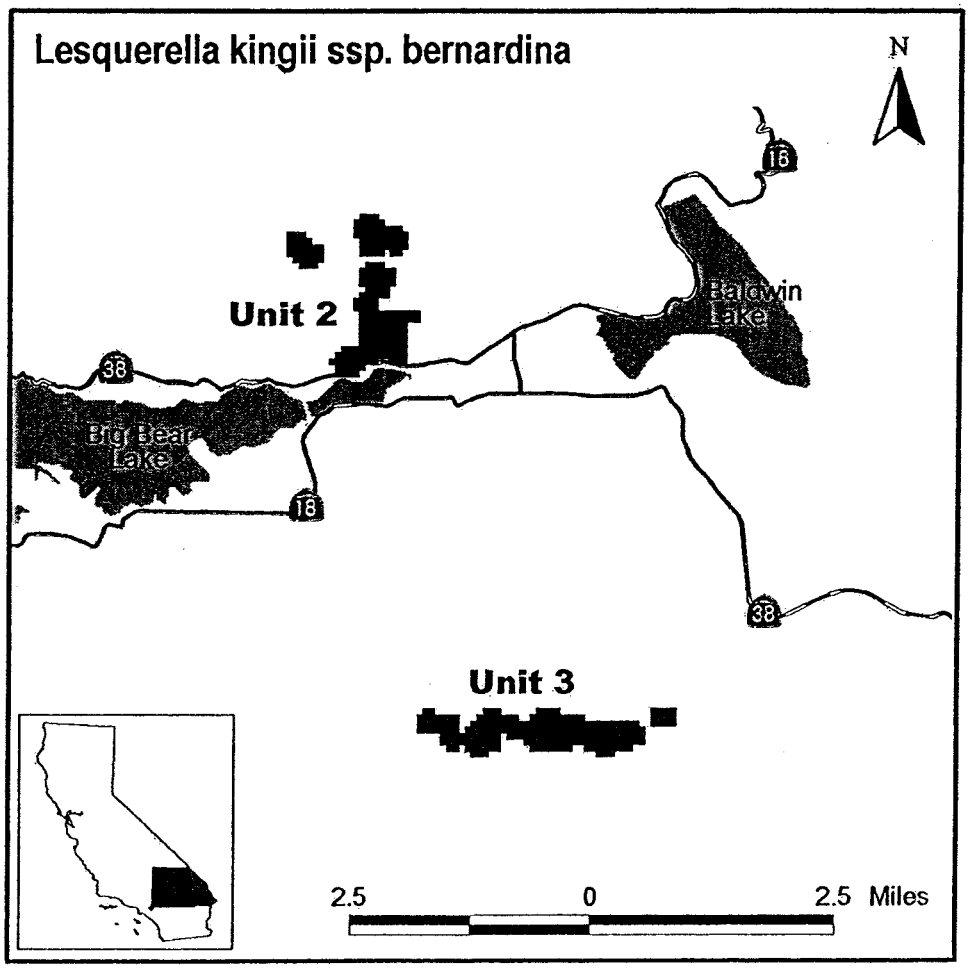
(E) Sugarlump Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle map Moonridge, California.

Subunit 3a: land bounded by the following UTM11 NAD27 coordinates (E, N): 512700, 3785700; 512900, 3785700; 512900, 3785600; 513300, 3785600; 513300, 3785300; 513400, 3785300; 513400, 3785400; 513500, 3785400; 513500, 3785500; 513600, 3785500; 513600, 3785600; 513700, 3785600; 513700, 3785700; 514000, 3785700; 514000, 3785600; 514300, 3785600; 514300, 3785500; 514500, 3785500; 514500, 3785600; 514600, 3785600; 514600, 3785700; 515000, 3785700; 515000, 3785600; 515400, 3785600; 515400, 3785500; 516300, 3785500; 516300, 3785400; 516400, 3785400; 516400, 3785100; 516200, 3785100; 516200, 3785000; 515900, 3785000; 515900, 3784900; 515600, 3784900; 515600, 3785000; 515400, 3785000; 515400, 3785100; 515200, 3785100; 515200, 3785000; 514500, 3785000; 514500, 3785100; 514400, 3785100; 514400, 3785200; 514100, 3785200; 514100, 3785300; 514000, 3785300; 514000, 3785000; 513800, 3785000; 513800, 3784900; 513500, 3784900; 513500, 3785000; 513400, 3785000; 513400, 3785100; 513300, 3785100; 513300, 3785000; 513100, 3785000; 513100, 3785100; 513000, 3785100; 513000, 3785300; 512600, 3785300; 512600, 3785600; 512700, 3785600; and 512700, 3785700.

Subunit 3b: land bounded by the following UTM11 NAD27 coordinates (E, N): 516500, 3785700; 516900, 3785700; 516900, 3785400; 516500, 3785400; and 516500, 3785700.

(*2*) *Lesquerella kingii* ssp. *bernardina* Map follows.



Family Fabaceae: *Astragalus albens* (Cushenbury Milk-Vetch)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Astragalus albens,* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on hillsides or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered

by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, and Cougar Buttes, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 503300, 3801900; 503600, 3801900; 503600, 3801700; 503700, 3801700; 503700, 3801600; 503800, 3801600; 503800, 3801500; 503900, 3801500; 503900, 3801200; 503800, 3801200; 503800, 3801100; 503900, 3801100; 503900, 3800900; 504000, 3800900; 504000, 3800800; 504100, 3800800; 504100, 3800500; 504000, 3800500; 504000, 3800300; 503900, 3800300; 503900, 3800200; 503500, 3800200; 503500, 3800300; 503400, 3800300; 503400, 3800400; 503300, 3800400; 503300, 3800600; 503200, 3800600; 503200, 3801800; 503300, 3801800; and 503300, 3801900.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 507000, 3801600; 507400, 3801600; 507400, 3801300; 507500, 3801300; 507500, 3800900; 507600, 3800900; 507600, 3800500; 507500, 3800500; 507500, 3800400; 507400, 3800400; 507400, 3800300; 507300, 3800300; 507300, 3800200; 507200, 3800200; 507200, 3800100; 507100, 3800100; 507100, 3800200; 507000, 3800200; 507000, 3800500; 506800, 3800500; 506800, 3800600; 506700, 3800600; 506700, 3801100; 506900, 3801100; 506900, 3801000; 507100, 3801000; 507100, 3801300; 507000, 3801300; and 507000, 3801600.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 513100, 3803700; 513600, 3803700; 513600, 3803100; 513500, 3803100; 513500, 3803000; 513400, 3803000; 513400, 3802900; 513300, 3802900; 513300, 3802800; 513100, 3802800; 513100, 3802900; 513000, 3802900; 513000, 3803000; 512900, 3803000; 512900, 3803400; 513000, 3803400; 513000, 3803500; 513100, 3803500; and 513100, 3803700.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3803300; 516300, 3803300; 516300, 3803000; 516000, 3803000; and 516000, 3803300.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3802600; 515200, 3802600; 515200, 3802200; 515100, 3802200; 515100, 3801900; 515300, 3801900; 515300, 3802000; 515400, 3802000; 515400, 3801900; 515500, 3801900; 515500, 3801600; 515100, 3801600; 515100, 3801500; 514800, 3801500; 514800, 3801600; 514700, 3801600; 514700, 3801900; 514600, 3801900; 514600, 3802000; 514500, 3802000; 514500, 3802300; 514600, 3802300; 514600, 3802400; 514700, 3802400; 514700, 3802500; 514800, 3802500; and 514800, 3802600.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3802500; 516200, 3802500; 516200, 3802400; 516300, 3802400; 516300, 3802100; 516200, 3802100; 516200, 3801900; 515800, 3801900; 515800, 3801800; 515700, 3801800; 515700, 3801900; 515600, 3801900; 515600, 3802100; 515500, 3802100; 515500, 3802200; 515600, 3802200; 515600, 3802300; 515900, 3802300; 515900, 3802400; 516000, 3802400; and 516000, 3802500.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 513700, 3800000; 514100, 3800000; 514100, 3799900; 514300, 3799900; 514300, 3799800; 514700, 3799800; 514700, 3799500; 514800, 3799500; 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514500, 3799400; 514500, 3799300; 514100, 3799300; 514100, 3799500; 514000, 3799500; 514000, 3799400; 513800, 3799400; 513800, 3799500; 513700, 3799500; and 513700, 3800000.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 515200, 3801300; 515500, 3801300; 515500, 3801200; 515600, 3801200; 515600, 3800800; 515500, 3800800; 515500, 3800700; 515400, 3800700; 515400, 3800400; 515300, 3800400; 515300, 3800300; 515400, 3800300; 515400, 3800200; 515500, 3800200; 515500, 3799600; 515600, 3799600; 515600, 3799500; 515900, 3799500; 515900, 3799400; 516300, 3799400; 516300, 3799200; 516500, 3799200; 516500, 3799000; 516700, 3799000; 516700, 3799600; 517100, 3799600; 517100, 3799400; 517200, 3799400; 517200, 3799300; 517100, 3799300; 517100, 3799200; 517200, 3799200; 517200, 3798900; 517100, 3798900; 517100, 3798600; 516500, 3798600; 516500, 3798900; 516400, 3798900; 516400, 3798800; 516200, 3798800; 516200, 3798900; 515400, 3798900; 515400, 3799000; 515300, 3799000; 515300, 3799100; 515200, 3799100; 515200, 3799600; 515100, 3799600; 515100, 3799700; 515000, 3799700; 515000, 3800100; 514900, 3800100; 514900, 3800800; 514800, 3800800; 514800, 3800700; 514600, 3800700; 514600, 3800800; 514500, 3800800; 514500, 3801000; 514600, 3801000; 514600, 3801100; 514800, 3801100; 514800, 3801000; 514900, 3801000; 514900, 3801100; 515100, 3801100; 515100, 3801200; 515200, 3801200; and 515200, 3801300.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 517200, 3802800; 517700, 3802800; 517700, 3802400; 517600, 3802400; 517600, 3802100; 517500, 3802100; 517500, 3802000; 517400, 3802000; 517400, 3801900; 517200, 3801900; 517200, 3802000; 517100, 3802000; 517100, 3802700; 517200, 3802700; and 517200, 3802800.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3802200; 518200, 3802200; 518200, 3801900; 518100, 3801900; 518100, 3801800; 517800, 3801800; and 517800, 3802200.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 517700, 3801500; 518300, 3801500; 518300, 3801200; 518200, 3801200; 518200, 3801100; 518100, 3801100; 518100, 3801000; 518000, 3801000; 518000, 3800900; 517900, 3800900; 517900, 3800800; 517800, 3800800; 517800, 3800600; 517700, 3800600; 517700, 3800500; 517800, 3800500; 517800, 3800000; 517700, 3800000; 517700, 3799900; 517300, 3799900; 517300, 3800000; 517200, 3800000; 517200, 3799900; 516800, 3799900; 516800, 3800000; 516700, 3800000; 516700, 3800200; 517100, 3800200; 517100, 3800900; 517200, 3800900; 517200, 3801000; 517400, 3801000; 517400, 3801200; 517500, 3801200; 517500, 3801400; 517700, 3801400; and 517700, 3801500.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3799800; 518600, 3799800; 518600, 3799500; 518500, 3799500; 518500, 3799400; 518400,

3799400; 518400, 3799300; 518200, 3799300; 518200, 3799100; 517900, 3799100; 517900, 3798700; 517500, 3798700; 517500, 3798900; 517400, 3798900; 517400, 3799600; 517700, 3799600; 517700, 3799700; 517800, 3799700; and 517800, 3799800.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 520200, 3801000; 520600, 3801000; 520600, 3800700; 520500, 3800700; 520500, 3800600; 520600, 3800600; 520600, 3800500; 520800, 3800500; 520800, 3800400; 520900, 3800400; 520900, 3800300; 521100, 3800300; 521100, 3800200; 521200, 3800200; 521200, 3800000; 521100, 3800000; 521100, 3799900; 520800, 3799900; 520800, 3800100; 520300, 3800100; 520300, 3800200; 520200, 3800200; 520200, 3800300; 520100, 3800300; 520100, 3800200; 519800, 3800200; 519800, 3800700; 520100, 3800700; 520100, 3800600; 520200, 3800600; and 520200, 3801000.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3799300; 519600, 3799300; 519600, 3798900; 519300, 3798900; 519300, 3799000; 519200, 3799000; 519200, 3799200; 519300, 3799200; and 519300, 3799300.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3800000; 520400, 3800000; 520400, 3799900; 520500, 3799900; 520500, 3799700; 520400, 3799700; 520400, 3799600; 520000, 3799600; 520000, 3799500; 520100, 3799500; 520100, 3799400; 520200, 3799400; 520200, 3799300; 520300, 3799300; 520300, 3799400; 520600, 3799400; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520100, 3799200; 520100, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798700; 521500, 3798700; 521500, 3798800; 521400, 3798800; 521400, 3799000; 521300, 3799000; 521300, 3799100; 521200, 3799100; 521200, 3799200; 521500, 3799200; 521500, 3799300; 521800, 3799300; 521800, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3797900; 521100, 3797900; 521100, 3798000; 521000, 3798000; 521000, 3797900; 520900, 3797900; 520900, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798000; 520300, 3798000; 520300, 3798300; 520200, 3798300; 520200, 3798200; 519900, 3798200; 519900, 3798300; 519800, 3798300; 519800, 3798400; 519700, 3798400; 519700, 3799000; 519800, 3799000; 519800, 3799100; 519700, 3799100; 519700, 3799600; 519900, 3799600; 519900, 3799900; 520100, 3799900; and 520100, 3800000.

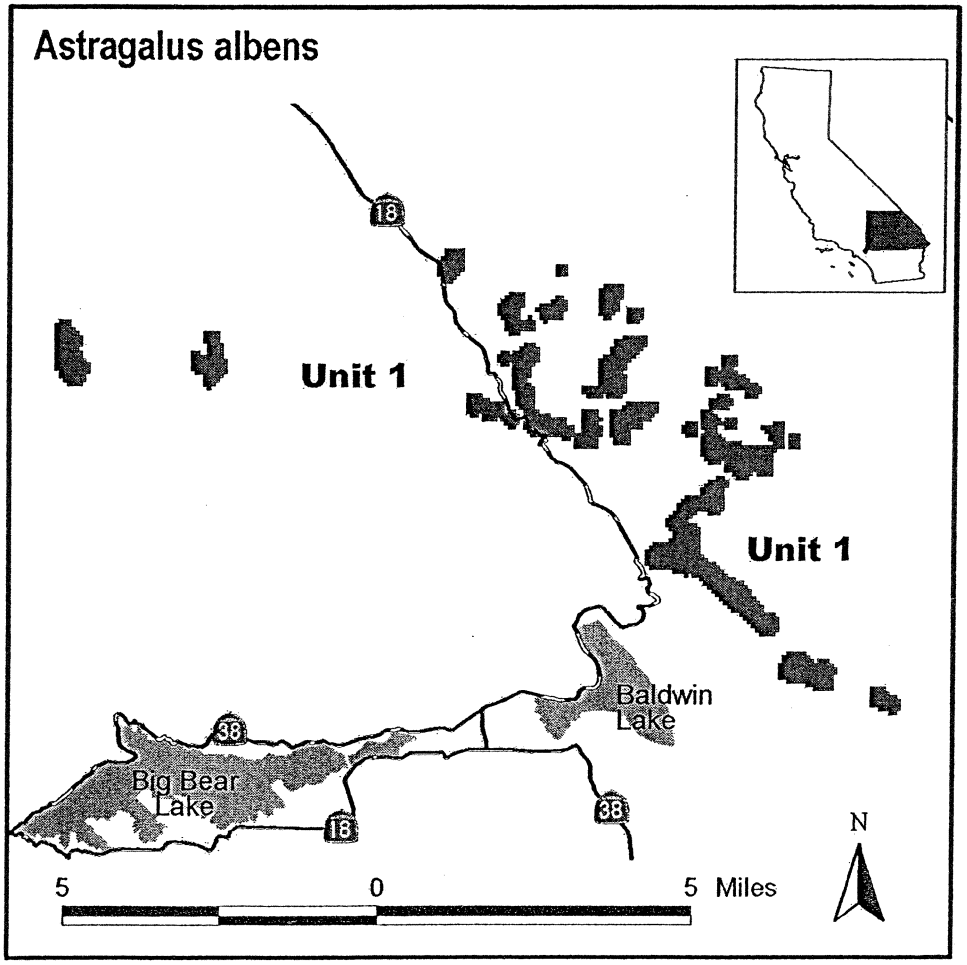
Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3799000; 522200, 3799000; 522200, 3798600; 521900, 3798600; and 521900, 3799000.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3797900; 520300, 3797900; 520300, 3797800; 520400, 3797800; 520400, 3797600; 520300, 3797600; 520300, 3797000; 520200, 3797000; 520200, 3796900; 519900, 3796900; 519900, 3797000; 519600, 3797000; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796700; 519600, 3796700; 519600, 3796600; 519700, 3796600; 519700, 3795900; 519800, 3795900; 519800, 3795800; 519900, 3795800; 519900, 3795700; 520100, 3795700; 520100, 3795600; 520200, 3795600; 520200, 3795500; 520300, 3795500; 520300, 3795400; 520400, 3795400; 520400, 3795300; 520600, 3795300; 520600, 3795200; 520800, 3795200; 520800, 3795100; 520900, 3795100; 520900, 3795000; 521000, 3795000; 521000, 3794800; 521100, 3794800; 521100, 3794700; 521200, 3794700; 521200, 3794600; 521300, 3794600; 521300, 3794400; 521600, 3794400; 521600, 3794300; 521700, 3794300; 521700, 3793900; 521600, 3793900; 521600, 3793800; 521200, 3793800; 521200, 3793900; 521100, 3793900; 521100, 3794000; 521000, 3794000; 521000, 3794100; 520900, 3794100; 520900, 3794200; 520800, 3794200; 520800, 3794300; 520700, 3794300; 520700, 3794400; 520500, 3794400; 520500, 3794500; 520400, 3794500; 520400, 3794600; 520300, 3794600; 520300, 3794700; 520200, 3794700; 520200, 3794800; 520100, 3794800; 520100, 3794900; 520000, 3794900; 520000, 3795000; 519900, 3795000; 519900, 3795100; 519800, 3795100; 519800, 3795200; 519700, 3795200; 519700, 3795300; 519500, 3795300; 519500, 3795400; 519400, 3795400; 519400, 3795300; 519300, 3795300; 519300, 3795400; 519000, 3795400; 519000, 3795500; 518400, 3795500; 518400, 3795600; 518300, 3795600; 518300, 3796000; 518400, 3796000; 518400, 3796100; 518500, 3796100; 518500, 3796200; 518900, 3796200; 518900, 3796300; 519000, 3796300; 519000, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3796900; 519000, 3796900; 519000, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; 519200, 3797300; 519300, 3797300; 519300, 3797400; 519700, 3797400; 519700, 3797600; 519800, 3797600; 519800, 3797700; 519900, 3797700; 519900, 3797800; 520100, 3797800; and 520100, 3797900.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3793400; 522400, 3793400; 522400, 3793300; 522500, 3793300; 522500, 3793200; 522600, 3793200; 522600, 3793100; 522700, 3793100; 522700, 3793200; 523000, 3793200; 523000, 3793100; 523100, 3793100; 523100, 3793000; 523200, 3793000; 523200, 3792800; 523100, 3792800; 523100, 3792400; 522600, 3792400; 522600, 3792500; 522400, 3792500; 522400, 3792600; 521900, 3792600; 521900, 3792700; 521700, 3792700; 521700, 3793100; 521800, 3793100; 521800, 3793300; 521900, 3793300; and 521900, 3793400.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524500, 3792500; 524500, 3792400; 524600, 3792400; 524600, 3792300; 524800, 3792300; 524800, 3792200; 524900, 3792200; 524900, 3791900; 524800, 3791900; 524800, 3791800; 524600, 3791800; 524600, 3791900; 524300, 3791900; 524300, 3792000; 524100, 3792000; and 524100, 3792500.

(2) *Astragalus albens* Map follows.



Family Polygonaceae: *Eriogonum ovalifolium* var. *vineum* (Cushenbury Buckwheat)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Eriogonum ovalifolium* var. *vineum* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, Butler Peak, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 497000, 3803000; 497200, 3803000; 497200, 3802900; 497300, 3802900; 497300, 3802500; 497000, 3802500; 497000, 3802600; 496900, 3802600; 496900, 3802900; 497000, 3802900; and 497000, 3803000.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 498000, 3800800; 498600, 3800800; 498600, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; and 498000, 3800800.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 503400, 3801200; 503700, 3801200; 503700, 3801100; 503900, 3801100; 503900, 3800800; 504000, 3800800; 504000, 3800400; 503900, 3800400; 503900, 3800300; 503700, 3800300; 503700, 3800400; 503400, 3800400; 503400, 3800600; 503300, 3800600; 503300, 3800700; 503200, 3800700; 503200, 3801000; 503300, 3801000; 503300, 3801100; 503400, 3801100; and 503400, 3801200.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 505200, 3800400; 505500, 3800400; 505500, 3800300; 506000, 3800300; 506000, 3800200; 506100, 3800200; 506100, 3799900; 506000, 3799900; 506000, 3800000; 505700, 3800000; 505700, 3799900; 505600, 3799900; 505600, 3799600; 505200,

3799600; 505200, 3800100; 505100, 3800100; 505100, 3800300; 505200, 3800300; and 505200, 3800400.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3799900; 507000, 3799900; 507000, 3799800; 507100, 3799800; 507100, 3799600; 506900, 3799600; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798700; 507300, 3798700; 507300, 3798600; 506800, 3798600; 506800, 3798800; 506200, 3798800; 506200, 3799200; 506500, 3799200; 506500, 3799300; 506600, 3799300; 506600, 3799500; 506700, 3799500; 506700, 3799800; 506800, 3799800; and 506800, 3799900.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507000, 3798100; 507000, 3798000; 507500, 3798000; 507500, 3797700; 507600, 3797700; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506800, 3797300; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3798200; 508300, 3798200; 508300, 3798100; 508400, 3798100; 508400, 3797900; 508300, 3797900; 508300, 3797800; 508000, 3797800; 508000, 3798100; 508100, 3798100; and 508100, 3798200.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 507900, 3797600; 508400, 3797600; 508400, 3797200; 508300, 3797200; 508300, 3797100; 508200, 3797100; 508200, 3796800; 507800, 3796800; 507800, 3797100; 507700, 3797100; 507700, 3797500; 507900, 3797500; and 507900, 3797600.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 508400, 3797200; 508700, 3797200; 508700, 3796900; 508400, 3796900; and 508400, 3797200.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3800600; 508600, 3800600; 508600, 3800500; 508700, 3800500; 508700, 3800200; 508600, 3800200; 508600, 3800100; 508100, 3800100; 508100, 3800500; 508300, 3800500; and 508300, 3800600.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3799800; 508500, 3799800; 508500, 3799400; 508400, 3799400; 508400, 3799300; 508200, 3799300; 508200, 3799400; 508000, 3799400; 508000, 3799700; 508100, 3799700; and 508100, 3799800.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 508700, 3799400; 509200, 3799400; 509200, 3799100; 509100, 3799100; 509100, 3798900; 508700, 3798900; and 508700, 3799400.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 509400, 3800700; 509700, 3800700; 509700, 3800600; 509800, 3800600; 509800, 3800500; 510300, 3800500; 510300, 3800400; 510400, 3800400; 510400, 3800300; 510600, 3800300; 510600, 3800100; 510200, 3800100; 510200, 3800300; 510100, 3800300; 510100, 3800400; 509900, 3800400; 509900, 3800200; 509500, 3800200; 509500, 3800100; 509200, 3800100; 509200, 3800300; 509100, 3800300; 509100, 3800500; 509200, 3800500; 509200, 3800600; 509400, 3800600; and 509400, 3800700.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 510500, 3801200; 510700, 3801200; 510700, 3800900; 510500, 3800900; 510500, 3800800; 510400, 3800800; 510400, 3800700; 510600, 3800700; 510600, 3800600; 510300, 3800600; 510300, 3800700; 510200, 3800700; 510200, 3800800; 510300, 3800800; 510300, 3801000; 510400, 3801000; 510400, 3801100; 510500, 3801100; and 510500, 3801200.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3800700; 511300, 3800700; 511300, 3800500; 510900, 3800500; and 510900, 3800700.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 511900, 3801000; 512200, 3801000; 512200, 3800800; 512300, 3800800; 512300, 3800700; 512500, 3800700; 512500, 3800600; 512700, 3800600; 512700, 3800800; 513000, 3800800; 513000, 3800300; 512900, 3800300; 512900, 3800100; 512800, 3800100; 512800, 3799900; 512900, 3799900; 512900, 3799800; 513000, 3799800; 513000, 3799700; 513100, 3799700; 513100, 3799500; 513000, 3799500; 513000, 3799400; 512700, 3799400; 512700, 3799500; 512500, 3799500; 512500, 3799600; 512300, 3799600; 512300, 3799700; 512200, 3799700; 512200, 3799800; 512100, 3799800; 512100, 3799600; 512200, 3799600; 512200, 3799500; 512300, 3799500; 512300, 3799200; 511800, 3799200; 511800, 3799500; 511700, 3799500; 511700, 3799400; 511400, 3799400; 511400, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799700; 511100, 3799700; 511100, 3799800; 511000, 3799800; 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511700, 3799900; 511700, 3799800; 511800, 3799800; 511800, 3799900; 512000, 3799900; 512000, 3800100; 511900, 3800100; 511900, 3800500; 512000, 3800500; 512000, 3800700; 511900, 3800700; and 511900, 3801000.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 513200, 3800300; 513500, 3800300; 513500, 3800200; 513900, 3800200; 513900, 3800100; 514000, 3800100; 514000, 3800000; 514100, 3800000; 514100, 3799900; 514200, 3799900; 514200, 3800000; 514600, 3800000; 514600, 3799800; 514500, 3799800; 514500, 3799300; 514100, 3799300; 514100, 3799600; 514000, 3799600; 514000, 3799400; 513700, 3799400; 513700, 3799500; 513500, 3799500; 513500, 3799400; 513600, 3799400; 513600, 3799300; 513900, 3799300; 513900, 3799200; 514000, 3799200; 514000, 3798900; 513600, 3798900; 513600, 3798800; 513500, 3798800; 513500, 3798700; 513300, 3798700; 513300, 3798800; 513200, 3798800; 513200, 3799000; 513100, 3799000; 513100, 3799500; 513200, 3799500; 513200, 3799800; 513400, 3799800; 513400, 3799900; 513100, 3799900; 513100, 3800200; 513200, 3800200; and 513200, 3800300.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514500, 3800800; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3802100; 515900, 3802100; 515900, 3801900; 516000, 3801900; 516000, 3801800; 516100, 3801800; 516100, 3801600; 516000, 3801600; 516000, 3801500; 516500, 3801500; 516500, 3801200; 516400, 3801200; 516400, 3801100; 516200, 3801100; 516200, 3800900; 516100, 3800900; 516100, 3800800; 516000, 3800800; 516000, 3800700; 515800, 3800700; 515800, 3800600; 516200, 3800600; 516200, 3800700; 516500, 3800700; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3799900; 515800, 3799900; 515800, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; 515300, 3799800; 515000, 3799800; 515000, 3799900; 514900, 3799900; 514900, 3800100; 515000, 3800100; 515000, 3800200; 515300, 3800200; 515300, 3800100; 515400, 3800100; 515400, 3800200; 515500, 3800200; 515500, 3800300; 515600, 3800300; 515600, 3800200; 515800, 3800200; 515800, 3800300; 515700, 3800300; 515700, 3800600; 515600,

3800600; 515600, 3800800; 515100, 3800800; 515100, 3800700; 515200, 3800700; 515200, 3800400; 515100, 3800400; 515100, 3800300; 514700, 3800300; 514700, 3800400; 514600, 3800400; 514600, 3800800; 514500, 3800800; 514500, 3800900; 514400, 3800900; 514400, 3801100; 514500, 3801100; 514500, 3801200; 514600, 3801200; 514600, 3801300; 514800, 3801300; 514800, 3801400; 515200, 3801400; 515200, 3801300; 515700, 3801300; 515700, 3801500; 515600, 3801500; 515600, 3801600; 515500, 3801600; 515500, 3801700; 515400, 3801700; 515400, 3802000; 515500, 3802000; and 515500, 3802100.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514700, 3799400; 514700, 3799500; 514800, 3799500; and 514800, 3799600.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3799700; 516900, 3799700; 516900, 3799600; 517100, 3799600; 517100, 3799500; 517200, 3799500; 517200, 3799000; 517300, 3799000; 517300, 3798700; 516800, 3798700; 516800, 3798600; 516400, 3798600; 516400, 3798700; 516300, 3798700; 516300, 3798600; 516100, 3798600; 516100, 3798700; 516000, 3798700; 516000, 3798800; 515900, 3798800; 515900, 3798900; 515700, 3798900; 515700, 3799000; 515400, 3799000; 515400, 3799100; 515300, 3799100; 515300, 3799500; 516000, 3799500; 516000, 3799400; 516300, 3799400; 516300, 3799300; 516400, 3799300; 516400, 3799600; 516700, 3799600; and 516700, 3799700.

Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3800500; 517100, 3800500; 517100, 3800300; 517200, 3800300; 517200, 3800000; 517100, 3800000; 517100, 3799900; 516700, 3799900; 516700, 3800000; 516600, 3800000; 516600, 3800400; 516700, 3800400; and 516700, 3800500.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 518600, 3799900; 519100, 3799900; 519100, 3799600; 519000, 3799600; 519000, 3799500; 518700, 3799500; 518700, 3799400; 518500, 3799400; 518500, 3799200; 518400, 3799200; 518400, 3799100; 518300, 3799100; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798900; 517800, 3798900; 517800, 3798800; 517600, 3798800; 517600, 3798900; 517500, 3798900; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517300, 3799300; 517300, 3799700; 517500, 3799700; 517500, 3799800; 518100, 3799800; 518100, 3799700; 518400, 3799700; 518400, 3799800; 518600, 3799800; and 518600, 3799900.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 515400, 3797400; 515800, 3797400; 515800, 3797300; 516300, 3797300; 516300, 3797200; 516400, 3797200; 516400, 3796900; 515500, 3796900; 515500, 3797000; 515400, 3797000; and 515400, 3797400.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 519100, 3797200; 519400, 3797200; 519400, 3797100; 519500, 3797100; 519500, 3796900; 519700, 3796900; 519700, 3796000; 519600, 3796000; 519600, 3795900; 519500, 3795900; 519500, 3795700; 519100, 3795700; 519100, 3796100; 519000, 3796100; 519000, 3796300; 518900, 3796300; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3797000; 519000, 3797000; 519000, 3797100; 519100, 3797100; and 519100, 3797200.

Subunit 1z: land bounded by the following UTM11 NAD27 coordinates (E, N): 519600, 3797600; 519800, 3797600; 519800, 3797500; 520300, 3797500; 520300, 3797100; 520200, 3797100; 520200, 3797000; 519800, 3797000; 519800, 3797100; 519700, 3797100; 519700, 3797200; 519500, 3797200; 519500, 3797500; 519600, 3797500; and 519600, 3797600.

Subunit 1aa: land bounded by the following UTM11 NAD27 coordinates (E, N): 519700, 3800600; 520200, 3800600; 520200, 3800200; 520100, 3800200; 520100, 3800100; 519700, 3800100; and 519700, 3800600.

Subunit 1ab: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3800000; 520700, 3800000; 520700, 3799900; 520800, 3799900; 520800, 3799500; 520400, 3799500; 520400, 3799600; 519900, 3799600; 519900, 3799900; 520000, 3799900; and 520000, 3800000.

Subunit 1ac: land bounded by the following UTM11 NAD27 coordinates (E, N): 521000, 3800000; 521500, 3800000; 521500, 3799700; 521400, 3799700; 521400, 3799500; 520900, 3799500; 520900, 3799800; 521000, 3799800; and 521000, 3800000.

Subunit 1ad: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3799400; 520500, 3799400; 520500, 3799300; 520600, 3799300; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520200, 3799200; 520200, 3799100; 520000, 3799100; 520000, 3799000; 520200, 3799000; 520200, 3798800; 520100, 3798800; 520100, 3798700; 519700, 3798700; 519700, 3799100; 519900, 3799100; 519900, 3799300; 520000, 3799300; and 520000, 3799400.

Subunit 1ae: land bounded by the following UTM11 NAD27 coordinates (E, N): 521400, 3799000; 522000, 3799000; 522000, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3798400; 521300, 3798400; 521300, 3798300; 521200, 3798300; 521200, 3798200; 520900, 3798200; 520900, 3798300; 520700, 3798300; 520700, 3798000; 520300, 3798000; 520300, 3798300; 520400, 3798300; 520400, 3798400; 520600, 3798400; 520600, 3798500; 520400, 3798500; 520400, 3798700; 520500, 3798700; 520500, 3798800; 520700, 3798800; 520700, 3798700; 520800, 3798700; 520800, 3798800; 521100, 3798800; 521100, 3798700; 521400, 3798700; 521400, 3798800; 521300, 3798800; 521300, 3798900; 521400, 3798900; and 521400, 3799000.

Subunit 1af: land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794600; 520100, 3794600; 520100, 3794200; 519800, 3794200; and 519800, 3794600.

Subunit 1ag: land bounded by the following UTM11 NAD27 coordinates (E, N): 520400, 3794200; 521100, 3794200; 521100, 3793900; 521000, 3793900; 521000, 3793800; 520700, 3793800; 520700, 3793700; 520400, 3793700; 520400, 3793800; 520300, 3793800; 520300, 3793700; 520000, 3793700; 520000, 3793800; 519900, 3793800; 519900, 3794000; 520000, 3794000; 520000, 3794100; 520400, 3794100; and 520400, 3794200.

Subunit 1ah: land bounded by the following UTM11 NAD27 coordinates (E, N): 521600, 3794700; 521800, 3794700; 521800, 3794600; 521900, 3794600; 521900, 3794300; 521800, 3794300; 521800, 3794200; 521400, 3794200; 521400, 3794500; 521500, 3794500; 521500, 3794600; 521600, 3794600; and 521600, 3794700.

Subunit 1ai: land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3793300; 521700, 3793300; 521700, 3793200; 521800, 3793200; 521800, 3793000; 521900, 3793000; 521900, 3793100; 522400, 3793100; 522400, 3793000; 522600, 3793000; 522600, 3792900; 522800, 3792900; 522800, 3792800; 523000, 3792800; 523000, 3792500; 523100, 3792500; 523100, 3792400; 523400, 3792400; 523400, 3792300; 523500, 3792300; 523500, 3791900; 523400, 3791900; 523400, 3791800; 523200, 3791800; 523200, 3791900; 523100, 3791900; 523100, 3792000; 522800,

3792000; 522800, 3792100; 522700, 3792100; 522700, 3792200; 522400, 3792200; 522400, 3792300; 522200, 3792300; 522200, 3792400; 522000, 3792400; 522000, 3792600; 521900, 3792600; 521900, 3792500; 521800, 3792500; 521800, 3792600; 521700, 3792600; 521700, 3792700; 521400, 3792700; 521400, 3792900; 521200, 3792900; 521200, 3793200; 521300, 3793200; and 521300, 3793300.

Subunit 1aj: land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524300, 3792500; 524300, 3792400; 524500, 3792400; 524500, 3792300; 524700, 3792300; 524700, 3792200; 524800, 3792200; 524800, 3792100; 524900, 3792100; 524900, 3792200; 525300, 3792200; 525300, 3792100; 525400, 3792100; 525400, 3791800; 525300, 3791800; 525300, 3791600; 525500, 3791600; 525500, 3791500; 525600, 3791500; 525600, 3791300; 525700, 3791300; 525700, 3791200; 525800, 3791200; 525800, 3791500; 526200, 3791500; 526200, 3791300; 526300, 3791300; 526300, 3791200; 526500, 3791200; 526500, 3791100; 526700, 3791100; 526700, 3791000; 526800, 3791000; 526800, 3791100; 527100, 3791100; 527100, 3791000; 527200, 3791000; 527200, 3790900; 527400, 3790900; 527400, 3790600; 527500, 3790600; 527500, 3790100; 527000, 3790100; 527000, 3790200; 526900, 3790200; 526900, 3790400; 526600, 3790400; 526600, 3790500; 526500, 3790500; 526500, 3790200; 526400, 3790200; 526400, 3790100; 526300, 3790100; 526300, 3790000; 526000, 3790000; 526000, 3790500; 525700, 3790500; 525700, 3790400; 525600, 3790400; 525600, 3790500; 525500, 3790500; 525500, 3790600; 525400, 3790600; 525400, 3790700; 525300, 3790700; 525300, 3791000; 525100, 3791000; 525100, 3791200; 524800, 3791200; 524800, 3791300; 524700, 3791300; 524700, 3791200; 524300, 3791200; 524300, 3791300; 524200, 3791300; 524200, 3791400; 524000, 3791400; 524000, 3791500; 523800, 3791500; 523800, 3791900; 524200, 3791900; 524200, 3792100; 524000, 3792100; 524000, 3792400; 524100, 3792400; and 524100, 3792500; excluding land bounded by 525900, 3791100; 525900, 3790900; 526000, 3790900; 526000, 3791100; and 525900, 3791100.

Subunit 1ak: land bounded by the following UTM11 NAD27 coordinates (E, N): 527600, 3790400; 527900, 3790400; 527900, 3790300; 528000, 3790300; 528000, 3790100; 527900, 3790100; 527900, 3790000; 527600, 3790000; and 527600, 3790400.

Subunit 1al: land bounded by the following UTM11 NAD27 coordinates (E, N): 527900, 3789600; 528200, 3789600; 528200, 3789300; 527800, 3789300; 527800, 3789500; 527900, 3789500; and 527900, 3789600.

Subunit 1am: land bounded by the following UTM11 NAD27 coordinates (E, N): 526900, 3789400; 527100, 3789400; 527100, 3789300; 527200, 3789300; 527200, 3789100; 527400, 3789100; 527400, 3789200; 527700, 3789200; 527700, 3789100; 527800, 3789100; 527800, 3789000; 528000, 3789000; 528000, 3789100; 528400, 3789100; 528400, 3789000; 528500, 3789000; 528500, 3788900; 528600, 3788900; 528600, 3788700; 528700, 3788700; 528700, 3788600; 528800, 3788600; 528800, 3788400; 528900, 3788400; 528900, 3788300; 529000, 3788300; 529000, 3788100; 528900, 3788100; 528900, 3788000; 528700, 3788000; 528700, 3788100; 528100, 3788100; 528100, 3788300; 527900, 3788300; 527900, 3788400; 527800, 3788400; 527800, 3788500; 527700, 3788500; 527700, 3788600; 527600, 3788600; 527600, 3788500; 527200, 3788500; 527200, 3788700; 527100, 3788700; 527100, 3788600; 526800, 3788600; 526800, 3788700; 526600, 3788700; 526600, 3788900; 526700, 3788900; 526700, 3789000; 526900, 3789000; and 526900, 3789400.

Subunit 1an: land bounded by the following UTM11 NAD27 coordinates (E, N): 529200, 3788100; 529500, 3788100; 529500, 3787700; 529400, 3787700; 529400, 3787600; 529100, 3787600; 529100, 3788000; 529200, 3788000; and 529200, 3788100.

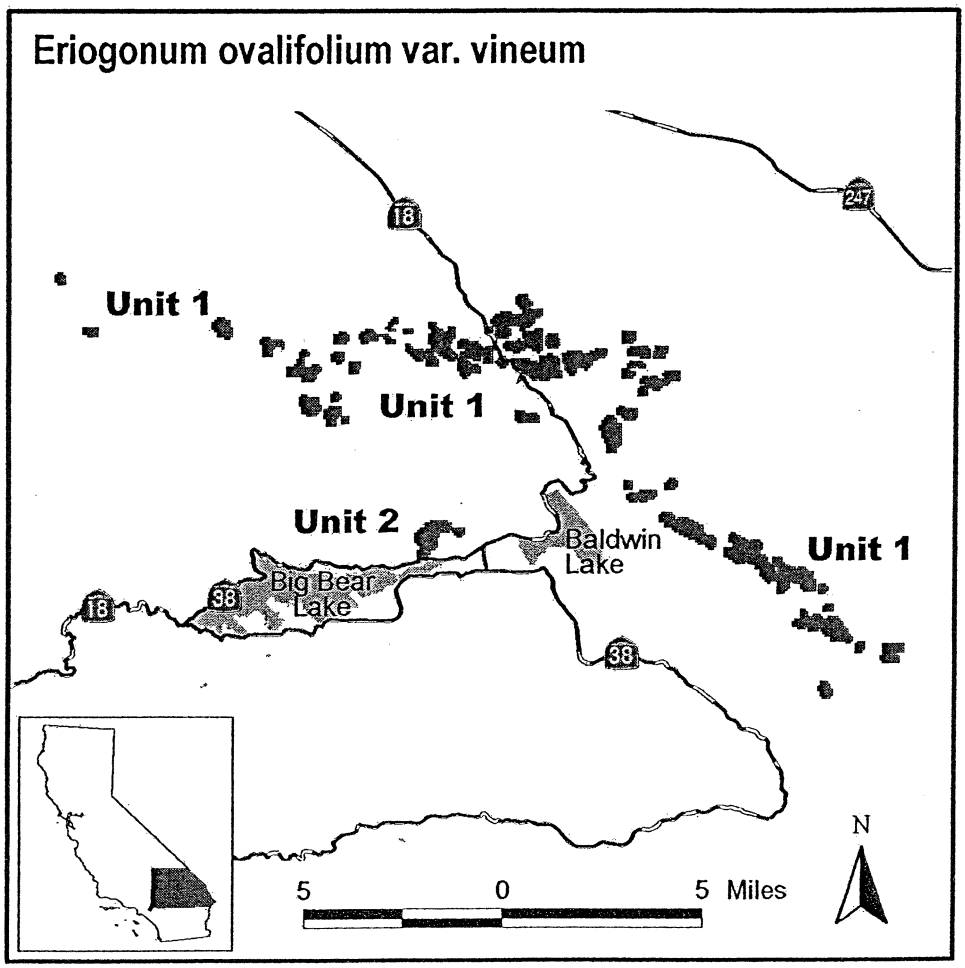
Subunit 1ao: land bounded by the following UTM11 NAD27 coordinates (E, N): 530200, 3788000; 531100, 3788000; 531100, 3787600; 530800, 3787600; 530800, 3787500; 530900, 3787500; 530900, 3787200; 530200, 3787200; 530200, 3787300; 530100, 3787300; 530100, 3787500; 530200, 3787500; and 530200, 3788000.

Subunit 1ap: land bounded by the following UTM11 NAD27 coordinates (E, N): 527700, 3786500; 528000, 3786500; 528000, 3786400; 528100, 3786400; 528100, 3786200; 528200, 3786200; 528200, 3785900; 528100, 3785900; 528100, 3785800; 527800, 3785800; 527800, 3785900; 527700, 3785900; 527700, 3786100; 527600, 3786100; 527600, 3786300; 527700, 3786300; and 527700, 3786500.

(D) Bertha Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California, land bounded by the following UTM11 NAD27 coordinates (E, N): 512000, 3793000; 512700, 3793000; 512700, 3792900; 512900, 3792900; 512900, 3792700; 513400, 3792700; 513400, 3792400; 513300, 3792400; 513300, 3792300; 513100, 3792300; 513100, 3792400; 513000, 3792400; 513000, 3792500; 512900, 3792500; 512900, 3792600; 512800, 3792600; 512800, 3792500; 512400, 3792500; 512400, 3792300; 512300, 3792300; 512300, 3791900; 512200, 3791900; 512200, 3791800; 512000, 3791800; 512000, 3791600; 511900, 3791600; 511900, 3791400; 511500, 3791400; 511500, 3791800; 511600, 3791800; 511600, 3792000; 511500, 3792000; 511500, 3792100; 511400, 3792100; 511400, 3792500; 511500, 3792500; 511500, 3792600; 511600, 3792600; 511600, 3792700; 511800, 3792700; 511800, 3792900; 512000, 3792900; and 512000, 3793000.

(2) *Eriogonum ovalifolium* var. *vineum* Map follows.



Family Polygonaceae: *Oxytheca parishii* var. *goodmaniana* (Cushenbury Oxytheca)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Oxytheca parishii* var. *goodmaniana* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Butler Peak, Fawnskin, Big Bear City, Rattlesnake Canyon, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 498200, 3801600; 498500, 3801600; 498500, 3801500; 498600, 3801500; 498600, 3801200; 498300, 3801200; 498300, 3801300; 498200, 3801300; and 498200, 3801600.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 498800, 3801200; 499400, 3801200; 499400, 3800900; 499500, 3800900; 499500, 3800800; 499600, 3800800; 499600, 3800600; 499500, 3800600; 499500, 3800500; 499400, 3800500; 499400, 3800400; 499100, 3800400; 499100, 3800300; 499000, 3800300; 499000, 3800000; 498900, 3800000; 498900, 3799900; 498700, 3799900; 498700, 3799600; 498300, 3799600; 498300, 3800000; 498400, 3800000; 498400, 3800100; 498600, 3800100; 498600, 3800300; 498500, 3800300; 498500, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; 498000, 3800800; 498400, 3800800; 498400, 3800900; 498700, 3800900; 498700, 3801100; 498800, 3801100; and 498800, 3801200.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 500200, 3799900; 500600, 3799900; 500600, 3799800; 500700, 3799800; 500700, 3799600; 500600,

3799600; 500600, 3799500; 500300, 3799500; 500300, 3799600; 500200, 3799600; and 500200, 3799900.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 502800, 3797400; 503400, 3797400; 503400, 3797200; 503500, 3797200; 503500, 3797000; 503400, 3797000; 503400, 3796900; 502900, 3796900; 502900, 3797000; 502800, 3797000; and 502800, 3797400.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 503600, 3799300; 504000, 3799300; 504000, 3798600; 504300, 3798600; 504300, 3798500; 504400, 3798500; 504400, 3798400; 505300, 3798400; 505300, 3798300; 505500, 3798300; 505500, 3798000; 505300, 3798000; 505300, 3797700; 505100, 3797700; 505100, 3797800; 505000, 3797800; 505000, 3798000; 504500, 3798000; 504500, 3797900; 504300, 3797900; 504300, 3798000; 504000, 3798000; 504000, 3798100; 503900, 3798100; 503900, 3798300; 503800, 3798300; 503800, 3798100; 503500, 3798100; 503500, 3798000; 503100, 3798000; 503100, 3798400; 503200, 3798400; 503200, 3798500; 503700, 3798500; 503700, 3798600; 503600, 3798600; and 503600, 3799300.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 506700, 3799500; 506900, 3799500; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798800; 506900, 3798800; 506900, 3798900; 506700, 3798900; 506700, 3798800; 506000, 3798800; 506000, 3799200; 506600, 3799200; 506600, 3799400; 506700, 3799400; and 506700, 3799500.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507300, 3798100; 507300, 3797800; 507400, 3797800; 507400, 3797700; 507600, 3797700; 507600, 3797600; 507900, 3797600; 507900, 3797500; 508000, 3797500; 508000, 3797400; 508100, 3797400; 508100, 3797200; 508200, 3797200; 508200, 3797000; 508300, 3797000; 508300, 3796700; 508400, 3796700; 508400, 3796600; 508500, 3796600; 508500, 3796200; 508200, 3796200; 508200, 3796100; 507700, 3796100; 507700, 3796500; 507800, 3796500; 507800, 3796600; 507900, 3796600; 507900, 3796700; 507800, 3796700; 507800, 3796800; 507700, 3796800; 507700, 3797000; 507600, 3797000; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506900, 3797300; 506900, 3797400; 506800, 3797400; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 508800, 3799300; 509000, 3799300; 509000, 3799200; 509100, 3799200; 509100, 3798800; 509000, 3798800; 509000, 3798700; 508800, 3798700; 508800, 3798800; 508700, 3798800; 508700, 3799100; 508800, 3799100; and 508800, 3799300.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 509300, 3801000; 509600, 3801000; 509600, 3800800; 509700, 3800800; 509700, 3800700; 509800, 3800700; 509800, 3800500; 510100, 3800500; 510100, 3800400; 510300, 3800400; 510300, 3800300; 510500, 3800300; 510500, 3800000; 509900, 3800000; 509900, 3800100; 509500, 3800100; 509500, 3800400; 509600, 3800400; 509600, 3800500; 509500, 3800500; 509500, 3800600; 509400, 3800600; 509400, 3800800; 509300, 3800800; and 509300, 3801000.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511500, 3799900; 511500, 3799800; 511600, 3799800; 511600, 3799600; 511500, 3799600; 511500, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799800; 511100, 3799800; 511100, 3799900; 511000, 3799900; and 511000, 3800100.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 512300, 3800600; 512600, 3800600; 512600, 3800500; 512700, 3800500; 512700, 3800100; 512600, 3800100; 512600, 3799900; 512700, 3799900; 512700, 3799600; 512300, 3799600; 512300, 3799700; 512100, 3799700; 512100, 3799600; 511700, 3799600; 511700, 3799800; 511900, 3799800; 511900, 3799900; 512000, 3799900; 512000, 3799800; 512100, 3799800; 512100, 3800000; 511900, 3800000; 511900, 3800100; 511800, 3800100; 511800, 3800500; 512300, 3800500; and 512300, 3800600.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3799300; 513600, 3799300; 513600, 3799200; 513700, 3799200; 513700, 3798900; 513600, 3798900; 513600, 3798800; 513400, 3798800; 513400, 3798900; 513200, 3798900; 513200, 3799200; 513300, 3799200; and 513300, 3799300.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3800400; 513500, 3800400; 513500, 3800200; 513700, 3800200; 513700, 3800100; 513800, 3800100; 513800, 3800000; 514000, 3800000; 514000, 3799900; 514100, 3799900; 514100, 3799700; 513800, 3799700; 513800, 3799800; 513700, 3799800; 513700, 3799900; 513300, 3799900; 513300, 3800000; 513200, 3800000; 513200, 3800300; 513300, 3800300; and 513300, 3800400.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514400, 3800800; 514400, 3800700; 514500, 3800700; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3801300; 515000, 3801300; 515000, 3801200; 515100, 3801200; 515100, 3801000; 515000, 3801000; 515000, 3800900; 514700, 3800900; 514700, 3801200; 514800, 3801200; and 514800, 3801300.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 514600, 3799700; 514900, 3799700; 514900, 3799400; 514600, 3799400; and 514600, 3799700.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 515900, 3802200; 516200, 3802200; 516200, 3801900; 516100, 3801900; 516100, 3801800; 515900, 3801800; 515900, 3801900; 515800, 3801900; 515800, 3802100; 515900, 3802100; and 515900, 3802200.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 516100, 3801400; 516400, 3801400; 516400, 3801000; 516100, 3801000; 516100, 3801100; 516000, 3801100; 516000, 3801300; 516100, 3801300; and 516100, 3801400.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 515300, 3800400; 515600, 3800400; 515600, 3800300; 515700, 3800300; 515700, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; and 515300, 3800400.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 515700, 3800600; 516100, 3800600; 516100, 3800500; 516400, 3800500; 516400, 3800400; 516500, 3800400; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3800000; 516000, 3800000; 516000, 3800100; 515800, 3800100; 515800, 3800300; 515700, 3800300; and 515700, 3800600.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 516800, 3800400; 517100, 3800400; 517100, 3800300; 517200, 3800300; 517200, 3800000; 516800, 3800000; and 516800, 3800400.

Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3799600; 515900, 3799600; 515900, 3799500; 516000, 3799500; 516000, 3799400; 516400, 3799400; 516400, 3799300; 516500, 3799300; 516500, 3799100; 516700, 3799100; 516700, 3799200; 516600, 3799200; 516600, 3799400; 516700, 3799400; 516700, 3799500; 517000, 3799500; 517000, 3799300; 517100, 3799300; 517100, 3799100; 517200, 3799100; 517200, 3798700; 516500, 3798700; 516500, 3798800; 516300, 3798800; 516300, 3798900; 516200, 3798900; 516200, 3799000; 516100, 3799000; 516100, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3798900; 515400, 3798900; 515400, 3799000; 515300, 3799000; 515300, 3799300; 515400, 3799300; 515400, 3799500; 515500, 3799500; and 515500, 3799600.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 517500, 3799800; 518000, 3799800; 518000, 3799700; 518300, 3799700; 518300, 3799800; 518600, 3799800; 518600, 3799700; 518800, 3799700; 518800, 3799400; 518600, 3799400; 518600, 3799300; 518700, 3799300; 518700, 3798900; 518300, 3798900; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798800; 517800, 3798800; 517800, 3798700; 517500, 3798700; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517500, 3799300; and 517500, 3799800.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 520900, 3798700; 521200, 3798700; 521200, 3798600; 521300, 3798600; 521300, 3798300; 521200, 3798300; 521200, 3798100; 520800, 3798100; 520800, 3798200; 520700, 3798200; 520700, 3798600; 520900, 3798600; and 520900, 3798700.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 526700, 3791000; 527000, 3791000; 527000, 3790900; 527300, 3790900; 527300, 3790800; 527400, 3790800; 527400, 3790600; 527000, 3790600; 527000, 3790400; 526600, 3790400; 526600, 3790700; 526700, 3790700; and 526700, 3791000.

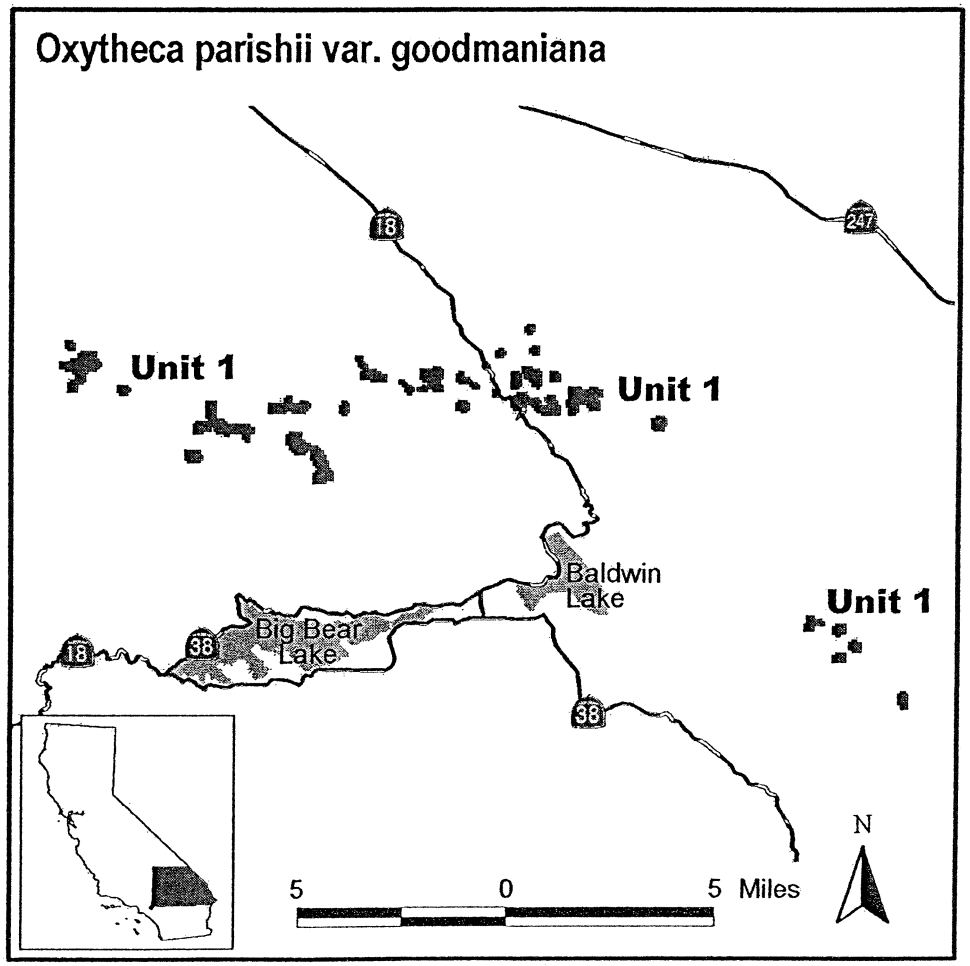
Subunit 1z: land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3790700; 528200, 3790700; 528200, 3790300; 528000, 3790300; 528000, 3790200; 527800, 3790200; 527800, 3790300; 527700, 3790300; 527700, 3790600; 527800, 3790600; and 527800, 3790700.

Subunit 1aa: land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3789600; 528200, 3789600; 528200, 3789200; 527700, 3789200; 527700, 3789500; 527800, 3789500; and 527800, 3789600.

Subunit 1ab: land bounded by the following UTM11 NAD27 coordinates (E, N): 528400, 3790100; 528600, 3790100; 528600, 3790000; 528800, 3790000; 528800, 3789600; 528400, 3789600; 528400, 3789700; 528300, 3789700; 528300, 3790000; 528400, 3790000; and 528400, 3790100.

Subunit 1ac: land bounded by the following UTM11 NAD27 coordinates (E, N): 530300, 3788100; 530500, 3788100; 530500, 3788000; 530600, 3788000; 530600, 3787400; 530300, 3787400; 530300, 3787600; 530200, 3787600; 530200, 3788000; 530300, 3788000; and 530300, 3788100.

(2) *Oxytheca parishii* var. *goodmaniana* Map follows.



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Dated: January 29, 2002.

Joseph E. Doddridge,

Acting Assistanct Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–2761 Filed 2–11–02; 8:45 am]

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Federal Register

Tuesday,
February 12, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI27

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for five plants endemic (restricted) to carbonate soils in the San Bernardino Mountains of southern California pursuant to the Endangered Species Act of 1973, as amended (Act). Four of the plants, *Astragalus albens* (Cushenbury milk-vetch), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) are federally listed as endangered and one plant is federally listed as threatened, *Erigeron parishii* (Parish's daisy). All five plants were federally listed on August 24, 1994. The following total acreages are proposed for designation as critical habitat for each of the following plants in San Bernardino County, California: *A. albens*, approximately 1,765 hectares (ha) (4,365 acres (ac)); *Erigeron parishii*, approximately 1,790 ha (4,420 ac); *Eriogonum ovalifolium* var. *vineum*, approximately 2,815 ha (6,955 ac); *L. kingii* ssp. *bernardina*, approximately 415 ha (1,025 ac); and *O. parishii* var. *goodmaniana*, approximately 1,275 ha (3,150 ac). Because of the considerable overlap in the proposed critical habitats for each of the five carbonate plants, the total area being proposed as critical habitat is approximately 5,335 ha (13,180 ac).

Several cooperative regional planning efforts that encompass the habitat for the carbonate plants are currently under development. These include the Carbonate Habitat Management Strategy (CHMS), the California Desert Conservation Area Plan (CDCA), and the West Mojave Plan. The CHMS deals specifically with carbonate plants and their habitats. Participants in this effort include the U.S. Forest Service, the Bureau of Land Management (BLM), the Service, and a number of private stakeholders (*e.g.,* mining interests).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comments on the proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until the close of business on April 15, 2002. Public hearing requests must be received by March 29, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any of several methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office during normal business hours at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The five plants addressed in this proposed designation of critical habitat, *Astragalus albens* (Cushenbury milk-vetch), *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) (collectively called ''carbonate plants'' in this document), are restricted primarily to carbonate deposits and their derived soils in the San Bernardino Mountains of San Bernardino County, CA (59 FR 43652). Collectively, these five species are found along a 56 kilometer (km) (35 mile (mi)) portion of the San Bernardino Mountains between 1,171 and 2,682 meters (m) (3,842 and 8,800 feet (ft)) in elevation. This area contains outcrops of carbonate substrates, primarily limestone and dolomite, in several bands running on an east-west axis along the desert-facing slopes of the San Bernardino Mountains; it is generally known as the ''carbonate belt''. All of the carbonate plants are endemic to California.

Limestone mining was cited as the primary threat to the five carbonate plants in the final listing rule (59 FR 43652). The threats to these plants continue to be population reduction and habitat loss, degradation, and fragmentation from surface mining activities. The carbonate plants occur mainly on public lands with unpatented mining claims or on lands that have been patented. At the time of listing, a significant number of carbonate plant occurrences and carbonate plant habitats had been negatively affected (59 FR 43652). Carbonate plant losses and habitat destruction/degradation are expected to continue under ongoing and expanded limestone mining operations.

The U.S. Forest Service, the BLM, the Service, and a number of private stakeholders (*e.g.,* mining interests) are developing a strategy, the CHMS, to conserve carbonate plants while accommodating other land uses. The goals of the CHMS are: (1) To protect the plants and the ecosystems upon which they depend, (2) to guide impact minimization and compensation for unavoidable impacts, (3) to streamline reviews of activities in areas determined to be refuges, and (4) to guide habitat restoration. Tasks to implement the conservation strategy include the development of preserve designs. Other similar planning efforts that include some areas of carbonate habitat include the CDCA and the West Mojave Plan (both of which are spearheaded by the BLM).

There are approximately 13,200 ha (32,600 ac) of carbonate substrates in the northeastern portion of the San Bernardino Mountains that provide suitable habitat for, and may support most of, the carbonate plants (59 FR 43652, Neel 2000, San Bernardino National Forest (SBNF) geographic information system (GIS) data 2001). This acreage is contained within the 64,900 ha (160,300 ac) draft CHMS area. According to the SBNF Carbonate Species Suitable Habitat Models (Sean Redar and Scott Eliason, SBNF, *in litt.* 2001), there are a total of approximately 19,700 ha (48,669 ac) of potential

carbonate plant habitat for the five plants (the sum is not equal to the habitat for each species because there is some overlap). Based on this model, the estimated suitable habitat for each species is: *Astragalus albens*, approximately 6,868 ha (16,964 ac); *Erigeron parishii*, approximately 8,428 ha (20,818 ac); *Eriogonum ovalifolium* var. *vineum*, approximately 8,949 ha (22,103 ac); *Lesquerella kingii* ssp. *bernardina*, approximately 6,753 ha (16,679 ac); and *Oxytheca parishii* var. *goodmaniana*, approximately 7,518 ha (18,570 ac).

The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (CNPS 2001) classifies each of the five carbonate plants as List 1B; which they define as rare, threatened, or endangered in California and elsewhere. The California Native Plant Society (CNPS) classifies all but one of the carbonate plants as being distributed in one to several highly restricted occurrences (with *Erigeron parishii* distributed in a limited number of occurrences). The CNPS also classifies each of the carbonate plants as ''endangered throughout its range.''

The five carbonate plant species in this document are treated as a group because they are restricted to soils that are ultimately derived from limestone, dolomite, or other substrates rich in calcium carbonate in the San Bernardino Mountains, California, and face similar threats. However, each of the five carbonate plants represents a distinct evolutionary lineage, and each has a unique set of ecological requirements and tolerances (Neel 2000).

Species Descriptions

Astragalus albens (Cushenbury Milk-Vetch)

Astragalus albens was described by Edward L. Greene (1885) based on a collection made by Samuel B. Parish and William F. Parish in 1882. Rydberg (1927) placed this species in the genus *Hamosa*. Rupert Barneby (1964) includes *Hamosa* in the genus *Astragalus*. Barneby (1959), Munz (1974), and Spellenberg (1993), all recognize this species as *Astragalus albens*.

Astragalus albens is a small plant in the pea family (Fabaceae). Individual plants are short-lived perennials, but may flower in their first year. The slender silvery-white-haired stems are decumbent (lie flat on ground with tips of stems turned upward), up to 30 centimeters (cm) (1 ft) long, with compound leaves consisting of 5 to 9 small leaflets. The plant's purple flowers have banner petals reaching up to 1 cm (0.4 inch (in)) long and occur in 5 to 14 flowered terminal racemes (flower stalks). The fruits, at maturity, are 10 to 18 millimeters (mm) (0.4 to 0.7 in) long and up to 3.5 mm (0.1 in) wide. The fruits are crescent shaped with three sides and two chambers and become papery in maturity. The plants generally flower from March to June and fruits mature as early as May (Spellenburg 1993).

Occurrences of *Astragalus albens* are scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from Dry Canyon southeastward to the head of Lone Valley, a range of 24 km (15 mi) (Barrows 1988c, 59 FR 43652, California Natural Diversity Data Base (CNDDB) 2001, CNPS 2001). In the final rule to list the carbonate plants, we indicated that there were fewer than 20 known occurrences that supported *A. albens*. The CNDDB (2001) identifies 17 extant element occurrences. The SBNF mapped 103 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Astragalus albens is typically found within singleleaf pinyon-Utah juniper, blackbush scrub, singleleaf pinyon, pinyon woodland, pinyon-juniper woodland, and Joshua tree woodland vegetation communities (Gonella 1994, Gonella and Neel 1995, Neel 2000). Plants closely associated with *A. albens* include *Fremontodendron californicum* (flannelbush), *Coleogyne ramosissima* (blackbush), *Echinocereus triglochidiatus* var. *mojavensis* (Mound cactus), *Prunus fasciculatus* (desert almond), and *Yucca schidigera* (Mojave yucca) (Gonella 1994, Gonella and Neel 1995).

Astragalus albens is typically found on carbonate soils derived directly from decomposing limestone bedrock along rocky washes with no apparent preference for aspect. It is generally found in areas with an open canopy cover, little accumulation of organic material, rock cover exceeding 75 percent, and gentle to moderate slopes (5 to 30 percent) (Neel 2000). Most *A. albens* occurrences are found at elevations between 1,524 and 2,012 m (5,000 and 6,600 ft) (59 FR 43652), but Neel (2000) documented the elevation range between 1,171 and 2,013 m (3,864 and 6,604 ft). This range is at the lower elevational limit of the five carbonate plant species discussed in this rule (Gonella and Neel 1995). Most of the *A. albens* occurrences below 1,500 m (about 5,000 ft) are found in rocky washes with limestone outwash from erosion (59 FR 43652, CNDDB 2001, SBNF GIS data 2001). Known occupied habitat for this species was mostly correlated with the Bird Spring Formation, Permian and Pennsylvanian age carbonate rock (S. Redar and S. Eliason, *in litt.* 2001). Soils at sites supporting *A. albens* have a higher percentage of calcium than soils that do not support this species (Gonella and Neel 1995).

Erigeron parishii (Parish's Daisy)

Erigeron parishii was described by Asa Gray (1884) based on specimens collected by Samuel B. Parish at Cushenbury Spring in 1882. It is a small perennial herb of the aster family (Asteraceae). Plants grow 10 to 30 cm (4 to 12 in.) high and flower from May through June. The simple linear leaves are covered with soft, silvery hairs, giving an overall light-green appearance to the plant. Flower heads are solitary, with deep rose to lavender ray flowers and yellow disk flowers borne at the tips of leafy stems. The flower heads have grayish-green, glandular bracts at the base of each flower head (59 FR 43652, Nesom 1993).

Erigeron parishii has the widest geographic distribution of the five carbonate plants, with a range that spans approximately 56 km (35 mi) along the carbonate belt in the northeastern San Bernardino Mountains, extending from Pioneertown in the east to Furnace Canyon in the west. This distribution includes occurrences on Tip Top Mountain and in Arctic, Cushenbury, Arrastre, and Rattlesnake Canyons (Krantz 1979a, Barrows 1988a, 59 FR 43652, CNDDB 2001). Recent surveys in Long Canyon (the historical eastern-most occurrence) did not locate any *E. parishii* plants (Neel 2000). We identified 25 occurrences that support *E. parishii* in the final listing rule (59 FR 43652). The CNDDB (2001) identifies 34 extant element occurrences. The SBNF mapped 87 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Erigeron parishii is typically associated with singleleaf pinyon-Utah juniper, singleleaf pinyon, pinyon-juniper woodlands, blackbush scrub, and creosote bush-bursage scrub vegetation communities (59 FR 43652, Neel 2000, Neel and Ellstrand 2001). Plants closely associated with *E. parishii* include *Pinus monophylla* (singleleaf pinyon), *Juniperus californica* (California juniper), *Yucca brevifolia* (Joshua tree), *Coleogyne ramosissima*, and *Astragalus albens*

(Gonella 1994, Gonella and Neel 1995, CNDDB 2001).

Erigeron parishii typically grows on limestone or dolomite soils occurring on dry, rocky slopes, shallow drainages; and outwash plains (59 FR 43652). Some *E. parishii* occurrences grow on a granite/limestone interface, usually when granitic parent material has been overlaid with limestone materials washed down from upslope (59 FR 43652). An occurrence at the Burns Pinyon Ridge Reserve/Pioneertown area grows on quartz monzonite soils where there is no apparent limestone alluvium (Neel 2000). *Erigeron parishii* is generally found at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft), which is at the lower elevations of the carbonate belt (59 FR 43652, Neel 2000). It is most commonly found in areas with slopes less than 10 degrees with about 50 percent of the occurrences on slopes that have a north aspect (Neel 2000).

Eriogonum ovalifolium var. *vineum (Cushenbury Buckwheat)*

Eriogonum ovalifolium var. *vineum* was described as *E. vineum* by John Kunkel Small (1898) based on a 1894 collection made by Samuel B. Parish near Rose Mine in the San Bernardino Mountains. Nelson (1911) treated the plant as a variety, *E. ovalifolium* var. *vineum*. This combination has incorrectly often been attributed to Jepson (1914), (Reveal 1989, Hickman 1993). Jepson (1914) did publish the combination but subsequently (Jepson 1925) realized the priority of Nelson's combination, which was followed by Abrams (1944), Munz and Keck (1959), and Munz (1974).

Eriogonum ovalifolium var. *vineum* is a perennial member of the buckwheat family (Polygonaceae) that forms low, dense mats typically 15 to 25 cm (6 to 10 in.) in diameter, but may reach 50 cm (20 in.). The leaves are round to ovate, white-woolly on both surfaces, and are 0.7 to 1.5 cm (0.3 to 0.6 in.) long. The flowers are whitish-cream, each petal with a wine-colored midrib, darkening to reddish or purple with age, and flowers are borne on stalks reaching 10 cm (4 in.) tall. Plants flower from May through June (Munz 1974, Hickman 1993). This species is primarily an outcrosser (pollen source for seed production is from another plant) (Neel and Ellstrand 2001).

Eriogonum ovalifolium var. *vineum* occurs in the carbonate belt of the northeastern San Bernardino Mountains extending from White Mountain in the west to Rattlesnake Canyon in the east, a distance of approximately 40 km (25 mi). This includes occurrences in Arctic and Cushenbury Canyons, Terrace and Jacoby Springs, along Nelson Ridge, and southeast to near Onyx Peak (Barrows 1988b; Brown, *in litt.* 1992; Gonella and Neel 1995; Tierra Madre Consultants 1992; 59 FR 43652; CNDDB 2001). In the final listing rule, we identified 20 occurrences that support *E. ovalifolium* var. *vineum*. The CNDDB (2001) identifies 32 extant element occurrences. The SBNF mapped 239 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

This species inhabits open areas in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, pinyon, pinyon-juniper, Joshua tree woodlands, and blackbush scrub vegetation communities (Gonella 1994, Gonella and Neel 1995, 59 FR 43652, Neel 2000). Plants closely associated with *Eriogonum ovalifolium* var. *vineum* include *Fremontodendron californicum, Arctostaphylos glauca* (big-berry manzanita), *A. patula* (green-leaf manzanita), *Phacelia douglasii* (Douglas' phacelia), *Yucca brevifolia, Pinus monophylla, Astragalus albens*, and *Erigeron parishii* (Gonella 1994, Gonella and Neel 1995, CNDDB 2001).

Eriogonum ovalifolium var. *vineum* typically grows with soils derived from limestone or other carbonate substrates (Hickman 1993, 59 FR 43652, CNDDB 2001). It is generally found on gentle slopes between 10 and 25 degrees (but occasionally on steep slopes up to 80 degrees) mostly with north or west aspects. Other habitat characteristics include open areas with powdery fine soils and little accumulation of organic material, a canopy cover generally less than 15 percent, and rock cover exceeding 50 percent. *Eriogonum ovalifolium* var. *vineum* was found at the widest elevational range of all the carbonate plants, between 1,400 and 2,400 m (4,600 and 7,900 ft) (59 FR 43652, Neel 2000). The known occupied habitat for *E. ovalifolium* var. *vineum* was correlated mostly with the Bird Spring and Bonanza King Formations (S. Redar and S. Eliason, *in litt.* 2001).

Lesquerella kingii ssp.*bernardina (San Bernardino Mountains Bladderpod)*

Lesquerella kingii ssp. *bernardina* is a member of the mustard family (Brassicaceae) and was first described by Munz (1932) as *Lequerella bernardina* based on a collection made by Frank W. Peirson at the east end of Bear Valley in 1924. Munz (1958) subsequently reduced this to a subspecies and published the combination *L. kingii* ssp. *bernardina*.

Lesquerella kingii ssp. *bernardina* is a silvery, short-lived perennial member of the mustard family (Brassicaceae). It grows to 10 to 20 cm (4 to 8 in.) tall. The basal leaves are elliptic to ovate with petioles 2 to 6 cm (0.8 to 2.4 in.) long. Flowers are borne in terminal racemes, and bloom from May to June. The yellow petals are 9 to 13 mm (0.35 to 0.5 in.) long, and styles are 6 to 9 mm (0.24 to 0.35 in.) long. The spherical fruits are short-haired, 2-chambered, and contain 2 to 4 seeds per chamber (Rollins 1993).

Lesquerella kingii ssp. *bernardina* is currently known from two areas around Bear Valley. One occurrence is on the north side of Big Bear Lake near the east end of Bertha Ridge and adjacent to Big Bear City. The other occurrence is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge site (59 FR 43652, CNDDB 2001). This species has the smallest known range of the five carbonate plants. In the final rule to list the carbonate plants, we identified these two areas that support L. kingii ssp. bernardina. Currently, the CNDDB (2001) identifies four element occurrences. The SBNF mapped 22 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Lesquerella kingii ssp. *bernardina* typically is found within singleleaf pinyon-mountain juniper, white fir forest, Jeffrey pine-western juniper woodland, subalpine forest vegetation communities, and occasionally on old roads (Myers and Barrows 1988, 59 FR 43652, Gonella 1994, Gonella and Neel 1995, Neel 2000, CNDDB 2001). Plants closely associated with *L. kingii* ssp. *bernardina* include *Pinus contorta* ssp. *murrayana* (lodgepole pine), *P. flexilis* (limber pine), *P. jefferyi* (Jeffery pine), *P. monophylla, Juniperus occidentalis* ssp. *australis* (western juniper), and *Eriogonum ovalifolium* var. *vineum* (Gonella 1994, Neel 2000, CNDDB 2001).

Lesquerella kingii ssp. *bernardina* is generally found on soils derived from dolomite substrates (Brown, *in litt.* 1992). It is usually found either on brown, sandy soils with white rocks or on large rock outcrops in open areas with little accumulation of organic material. It grows on dry flats and slopes of low to moderate steepness (mostly between 10 and 20 degrees) with no apparent aspect preference. The dolomite soils that support *L. kingii* ssp. *bernardina* are south and west of the majority of the sites of the other four carbonate plant species. *Lesquerella kingii* ssp. *bernardina* occupies the narrowest elevational range of the five carbonate plants, between 2,098 and

2,700 m (6,883 and 8,800 ft) (Rollins 1993, 59 FR 43652). The known occupied habitat for this plant is associated with the Bonanza King Formation and other Cambrian age substrates (S. Redar and S. Eliason, *in litt.* 2001).

Oxytheca parishii var. *goodmaniana (Cushenbury Oxytheca)*

Barbara Ertter (1980) described the variety *Oxytheca parishii* var. *goodmaniana* based on material collected by S. P. Parish and W. F. Parish in 1882 near Cushenbury Spring. Previous collections of this species were identified as *Oxytheca parishii* var. *abramsii* or *Oxytheca watsonii.*

Oxytheca parishii var. *goodmaniana* is a small, wiry annual plant belonging to the buckwheat family (Polygonaceae). Specimens grow to 5 to 30 cm (2 to 12 in.) tall and have a basal rosette of leaves. Each leaf is 1 to 3 cm (0.4 to 1.2 in.) long. The six small flowers have white to rose or greenish-yellow perianth segments (undifferentiated whorl of petals and sepals). Flowers occur in clusters of 3 to 12 and are surrounded at their base by a funnel-shaped involucral bract (modified leaf).

Oxytheca parishii var. *goodmaniana* is an annual species, so the number of individual plants present fluctuates from year to year, depending on the seed bank dynamics, rainfall, and temperature. Because it is an annual, has few occurrences, and the total number of individuals at some occurrences is often low, this species may be more susceptible to extinction from environmental stochasticity (random events) than the other four carbonate plant species (59 FR 43652).

Oxytheca parishii var. *goodmaniana* is scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from White Mountain in the west to Rattlesnake Canyon in the east. This distribution includes occurrences near Cushenbury Spring; Cushenbury, Marble, Arctic, Wild Rose, and Furnace Canyons; Blackhawk, Mineral, and Tip Top Mountains; Terrace Springs; Rose Mine and Green Lead gold mine (59 FR 43652, CNDDB 2001, CNPS 2001, Gonella and Neel 1995). This species occupies the second-smallest geographical area of the five carbonate plants. In the final listing rule, we identified seven known extant occurrences. The CNDDB (2001) identifies 16 element occurrences. The SBNF mapped 93 site-specific localities that support this species for their detailed draft CHMS maps (SBNF GIS data 2001).

Oxytheca parishii var. *goodmaniana* is typically found in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, and canyon live oak woodlands vegetation communities (59 FR 43652, Neel 2000). Plants closely associated with *O. parishii* var. *goodmaniana* include *Cercocarpus ledifolius* (mountain mahogany), *Arctostaphylos glauca, Chrysothamnus viscidiflorus* (yellow rabbitbrush), and *Achnatherum coronata* (needlegrass) (CNDDB 2001).

Oxytheca parishii var. *goodmaniana* is typically found on soils derived from limestone, dolomite, or a mixture of limestone and dolomite substrates (Tierra Madre Consultants 1992, 59 FR 43652, Neel 2000). Hickman (1993) describes it as occurring on limestone talus. Neel (2000) found that it generally occurs in areas with gentle slopes between 10 and 25 degrees with no apparent preference for aspect. *Oxytheca parishii* var. *goodmaniana* is typically found at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft) (Neel 2000). Known occupied habitat for this species is mostly correlated with the Bird Springs Formation, Bonanza King Formation, Monte Cristo Limestone, and Sultan Limestone, and Crystal Pass substrate (S. Redar and S. Eliason, *in litt.* 2001).

Habitat Descriptions

The San Bernardino Mountains support a wide diversity of natural habitats that are the result of their geographic position between the desert and coastal environments, geological history, elevation, varied topography, and uncommon geological substrates such as carbonate outcrops (*e.g.*, limestone and dolomite). The SBNF, which encompasses most of the San Bernardino Mountains, covers less than one percent of the land area within the State of California, yet reportedly contains populations of more than 25 percent of all native Californian plant species (Krantz 1994). The San Bernardino Mountains are also known to support one of the highest concentrations of endemic plants in the United States (Krantz 1994). This high rate of endemism includes a number of specialized plants that are restricted to carbonate substrates in this area (Gonella 1994, Krantz 1994).

Within the mountain range, carbonate rock outcrops occur in several east-west bands that run along the desert-facing slopes, from approximately White Mountain in the west to Blackhawk Mountain and Terrace Springs in the east. From here, the band of carbonate substrate narrows and turns southeast toward Rattlesnake Canyon and Tip Top Mountain. Disjunct (separate) outcrops occur on ridges to the north and south of the Big Bear Valley, and eastward to the Sawtooth Hills (U.S. Geologic Survey 1995).

Collectively, the ranges of these five species span 56 km (35 mi) and occupy elevations between 1,178 and 2,659 m (3,864 to 8,724 ft) in the San Bernardino Mountains (Neel 2000). Plant communities in this area vary greatly by substrate type and elevation and have been described by Holland (1986), Thorne (1995), Vasek and Barbour (1995), Vasek and Thorne (1995), and Neel (2000). Neel (2000) developed more detailed, quantitative descriptions of the vegetation types that are associated with the five carbonate plants using extensive vegetation sampling and found that most of the occurrences of each of the five carbonate plants are found in the following six vegetation types: blackbush scrub, canyon live oak, singleleaf pinyon, singleleaf pinyon-mountain juniper, singleleaf pinyon-Utah juniper, and white fir forest.

Blackbush scrub vegetation supports *Astragalus albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum.* It primarily occurs between 1,130 and 1,665 m (3,707 to 5,463 ft) in this area. Blackbush scrub vegetation is increasingly abundant at the higher elevations and is dominated by *Coleogyne ramosissima* (blackbush). The shrub cover is generally under 1 meter high and sometimes quite dense. The overstory is sparse and consists of *Yucca brevifolia, Pinus monophylla,* and *Juniperus osteosperma* (Utah juniper) (Neel 2000).

Singleleaf pinyon vegetation supports *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs between 1,420 and 2,440 m (4,659 to 8,005 ft) in this area. Singleleaf pinyon vegetation is dominated by *Pinus monophylla* (singleleaf pinyon). The shrub layer in this vegetation is relatively open and occasionally supports *Arctostaphylos glauca* (Neel 2000).

Canyon live oak vegetation supports *Oxytheca parishii* var. *goodmaniana* and primarily occurs between 1,793 and 2,440 m (5,883 and 8,005 ft) in this area. Canyon live oak vegetation is dominated by both *Quercus chrysolepis* (canyon live oak) and *Pinus monophylla.* Tree cover in this vegetation type is the densest of all of the vegetation types mentioned in this document, while shrub cover is the sparsest (Neel 2000).

Singleleaf pinyon-mountain juniper vegetation supports *Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca*

parishii var. *goodmaniana.* It primarily occurs between 1,909 and 2,745 m (6,263 and 9,005 ft) in this area. Singleleaf pinyon-mountain juniper vegetation is dominated by *Pinus monophylla* and *Juniperus occidentalis* ssp. *australis. Cercocarpus ledifolius* is the only characteristic understory species (Neel 2000).

Singleleaf pinyon-Utah juniper vegetation supports *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs between 1,212 and 2,390 m (3,976 and 7,841 ft) in this area. Singleleaf pinyon-Utah juniper vegetation is dominated by *Pinus monophylla* and *Juniperus osteosperma. Ephedra viridis* (green ephedra) and *Achnatherum coronatum* (needlegrass) are characteristic of the understory (Neel 2000).

White fir forest vegetation supports *Lesquerella kingii* ssp. *bernardina* and *Oxytheca parishii* var. *goodmaniana.* It primarily occurs on steep north-facing slopes between 2,196 and 2,720 m (7,205 and 8,924 ft) in this area. White fir forest vegetation is dominated by *Abies concolor* (white fir) and *Pinus flexilis* (limber pine) in the overstory (Neel 2000).

The carbonate plants have also been reported to occur in five other vegetation communities: Jeffrey pine-western juniper woodland, Joshua tree woodland, pinyon woodland, pinyon-juniper woodland, and subalpine forest (Krantz 1979a, 1979b; Neel 2000; CNDDB 2001). Jeffrey pine-western juniper woodland is reported to support *Lesquerella kingii* ssp. *bernardina* (CNDDB 2001). Joshua tree woodland and pinyon woodland are reported to support *Astragalus albens* and *Eriogonum ovalifolium* var. *vineum* (CNDDB 2001). Pinyon-juniper woodland is reported to support *A. albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum* (CNDDB 2001). Pinyon-juniper woodlands are generally associated with relatively steep slopes.

Some of these plant communities occur in the same general area (*e.g.,* singleleaf pinyon woodlands, canyon live oak woodland), but on noncarbonate soils. Big sagebrush, pebble plains, riparian, and meadow communities also occur within the carbonate plants area; however, they do not occupy large areas and do not support carbonate endemic plants.

Ecology

Little is known about certain aspects of the life history and population dynamics of carbonate plants, including their pollination biology, seed dispersal agents and patterns, seed bank dynamics, seed dormancy requirements, and seedling ecology and establishment rates (Neel 2000). However, the distributions of each of these plants have been well studied through numerous botanical investigations and project-level surveys funded by Federal agencies and mining companies (Krantz 1979a, 1979b; Wilson and Bennett 1980; Barrows 1988a, 1988b, 1988c; Tierra Madre Consultants 1992; and herbarium specimens at Rancho Santa Ana Botanic Garden). The general ranges of these species are described in Munz and Keck (1959), Barneby (1959), Munz (1974), Hickman (1993), Nessom (1993), Rollins (1993), Spellenberg (1993) and in the final listing rule (59 FR 43652). The carbonate plants do not appear to be specifically linked to early vegetation successional stages after disturbance; however, they are found on some surfaces that are naturally disturbed by landslides and substrate upheaval. Primarily, they occur in habitat that is undisturbed by human activities. They consistently occur on soils that are at least partially derived from carbonate substrates. However, each of these plants have specific habitat and microhabitat requirements, including parent geology, vegetation community type, associated species, soil pH, slope, and elevation (Neel 2000).

Occurrences of carbonate plants shift within the range of suitable habitat. Historically, occurrences may have periodically become extirpated, while other suitable habitat may have been colonized from other large occurrences. Given (1994) noted the need for enough suitable habitat to maintain equilibrium between naturally occurring local extirpations and colonizations. Not all habitat for a species is likely to be occupied at the same time, and failure to conserve enough suitable habitat could potentially reduce the size and viability of the metapopulation as surely as destruction of occupied habitat (Given 1994). A metapopulation has been described as ''* * *a set of populations (*i.e.,* independent demographic units; Ehrlich 1965) that are interdependent over ecological time. That is, although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that occur, say, on the order of every 10 to 100 generations'' (Harrison *et al.* 1988). The persistence of these species depends on the interrelatedness of local extirpations and recolonizations, the availability of newly suitable habitat, and dispersal (Given 1994; Hanski 1997, 1999; Hanksi and Gilpin 1991). *Harrison et al.* (2000) demonstrated this natural turnover and fluctuation in populations of five plants restricted to serpentine seeps in Napa and Solano counties, California. Because of these population dynamics, long-term persistence of the carbonate plants requires sufficient suitable habitat contiguous with areas that are currently occupied by the plants.

Each of the five carbonate plant species exhibits several limiting ecological factors that increases the probability for extirpation events to occur (*e.g.,* restricted distribution, habitat specialization, and short reproductive lifespans). These factors may, among other things, reduce gene flow between occurrences, reduce pollination between and among occurrences, and decrease the probability that new colonizations will occur. The amount of habitat required to sustain a species increases because of these limiting ecological factors (Burgman *et al.,* 2001).

Previous Federal Action

On December 15, 1980, we published a Notice of Review (NOR) of plants which included *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* as Category 1 candidate taxa and Erigeron parishii as a Category 2 taxon (45 FR 82480). The February 21, 1990, NOR of plants also included *Astragalus albens* as a Category 1 taxon and *Oxytheca parishii* var. *goodmaniana* as a Category 2 taxon (55 FR 6184). Category 1 taxa were those taxa for which substantial information on biological vulnerability and threats were available to support preparation of listing proposals. Category 2 candidates were taxa for which data in our possession indicated listing was possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules.

On November 19, 1991, we published a proposed rule in the **Federal Register** to list the five plants as endangered (56 FR 58332). On August 24, 1994, we published a final rule listing *Erigeron parishii* as threatened and *Astragalus albens, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* as endangered (59 FR 43652). At that time, we indicated that designation of critical habitat for these plants was not prudent because such designation would likely increase the

degree of threat from vandalism, collection, or other human activities.

On June 15, 2000, the CNPS filed a lawsuit in Federal District Court for the Southern District of California for our failure to designate critical habitat for the five carbonate plants (*California Native Plant Society* v. *Berg, et al.,* 00CV1207–L (LSP)). On April 27, 2001, the Court vacated our August 24, 1994, ''not prudent'' determination for critical habitat and ordered us to reevaluate its prudency, and if prudent to complete a proposed rule by January 31, 2002. The Court further ordered us to publish a final critical habitat designation on or before September 30, 2002. This proposed critical habitat determination has been drafted in compliance with the aforementioned court order.

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 species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection for lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that lack a Federal nexus, critical habitat designation would not afford any additional protections under the Act with respect to such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides for the essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will attempt to not designate areas that lack all primary constituent elements, as defined at 50 CFR 424.12(b), that provide for the essential life cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994, provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available (59 FR 34271). It requires us, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the section 9 of the Act prohibitions, 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In our final listing rule we concluded that the designation of critical habitat for the five carbonate plants was not prudent, explaining that such designation likely would increase the degree of threat from vandalism, collection, or other human activities (59 FR 43652).

The five carbonate plants may be vulnerable to vandalism, collection, or other human activities. In the final rule to list the four plants from southwestern California and Baja California, Mexico (63 FR 54938), we indicated that threats to listed plants might be exacerbated by the publication of critical habitat maps and further dissemination of location information. We also documented increases in collections of other sensitive species after listing actions (an increase in the collection of plants following the proposed listing of the six mountain plants from southern California) (63 FR 49006). Recently, we have even determined that designation of critical habitat is not prudent for one species (the rock gnome lichen) because it would likely increase the threat from collection, vandalism, or habitat degradation and destruction, both direct and inadvertent (66 FR 51445). However, at this time, we do not have site-specific evidence throughout the limited range of the carbonate plants documenting the vandalism or collection of these species, nor do we have evidence of an increase in threats due to illegal mining or other human activities following the listing of the five carbonate plants. There has been one known instance of illegal mining that was apparently an isolated incident (S. Eliason, pers. comm., 2001). Since then, there has been cooperative participation in the CHMS involving the SBNF, the Service, the BLM, and local stakeholders including mining interests. Maps with detailed, site-specific locations of the five carbonate plants have been used during meetings for the CHMS. Since this time, there have been no known additional instances of illegal mining. Therefore, it does not appear that the dissemination of distributional information of the five carbonate plants has led to an increase in the nature or degree of threats. Because of the cooperative participation in the CHMS, we do not expect that the identification of critical habitat will substantially increase the degree of threat to these species by vandalism, collection, or other human activities (*e.g.*, illegal mining).

There may be some educational or informational benefits to designating critical habitat. Critical habitat may be used as a tool to help identify areas within the range of the five carbonate plants essential for their conservation. For example, designation of critical habitat on non-Federal lands may provide some educational benefit by formally identifying on a range-wide basis those areas essential to the conservation of these species and, therefore, areas that are likely to be the focus of recovery efforts. Also, while a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation process, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances when a section 7 consultation would be triggered only if critical habitat is designated (for example, if we designated unoccupied habitat or if occupied habitat became unoccupied).

Based on our discussion above, we now determine that the designation of critical habitat is not likely to increase the nature and degree of threats due to vandalism, and in fact, there may be some additional conservation benefits to designating critical habitat on lands essential to the conservation of the five carbonate plants. Additionally, this proposed critical habitat may help focus efforts in the development of the CHMS and revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan. Therefore, in accordance with our regulations (50 CFR 424.12(a)(1)), we now determine that it is prudent to propose the designation of critical habitat for the five carbonate plants: *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana.*

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the five carbonate plants. This information included data from aerial photography (1995 Digital Orthorectified Quarter Quadrangles (DOQQ) and 2000 SPOT (*Systeème Pour l'Observation de la Terre*) satellite imagery); the SBNF Carbonate Species Suitable Habitat Models (S. Redar and S. Eliason, *in litt.* 2001); species location data from the SBNF, draft CHMS, and CNDDB (2001); the final listing rule (59 FR 43652), information in species background sections (USFWS 2001a, *in prep.*) being prepared for the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan; research and survey observations published in peer-reviewed articles; regional GIS coverages (*e.g.,* soils, occurrence data, vegetation, land ownership, and elevation); project-specific and other miscellaneous reports submitted to us; additional information from the BLM regarding a section 7 consultation (1–8–01–F–18) on the effects of the California Desert Conservation Area Plan (CDCA) on 10 plant species (BLM, *in litt.* 2001); a section 7 consultation with the SBNF on various ongoing and related activities affecting carbonate habitats (USFWS 2001b); discussions with representatives of the SBNF and botanical and other knowledgeable experts; and geologic map coverage of the Cushenbury Canyon area. We also visited portions of the carbonate belt in the northeastern San Bernardino Mountains, San Bernardino County, California within the SBNF. We concentrated our analysis on those areas with known occurrences for each of these species.

The number of individuals of each carbonate plant species fluctuates temporally (over time) and spatially (over an area) (Tierra Madre 1992; Krantz 1994; Neel 2000; CNDDB 2001). Population estimates from different time periods and surveyors also vary in precision and accuracy. Therefore, comparing these data may yield misleading estimates of the number of individuals in a given area (Neel 2000). Additionally, the mapped polygons associated with various groupings of the carbonate plants have varied from year to year and surveyor to surveyor (Tierra Madre 1992; Krantz 1994; Neel 2000; CNDDB 2001). Therefore, estimates of the number of individuals are not given in this document.

Names associated with the various groupings of carbonate plants also differ (*e.g.,* population, aggregate occurrence (grouped occurrences), element

occurrence (as used by the CNDDB), and point location (which describes a detailed mapping area used by the SBNF)) (59 FR 43652, Neel 2000, CNDDB 2001)). For the purposes of determining areas essential to the conservation of the carbonate plants, we grouped many of the site-specific localities identified by the CNDDB and the SBNF. This grouping allowed us to analyze the site-specific observations of the individual plants and the biological and ecological dynamics of these groupings, such as seed banks, connectivity and gene flow, and pollinator and seed dispersal vectors. The groupings also allowed for ease in the description, mapping, and definitions of legal boundaries. Consequently, we refer to each of these groupings as an ''occurrence.''

After analyzing all of the occurrence data from the CNDDB, the final listing rule, SBNF, and additional scientific and commercial sources, we grouped *Astragalus albens* into 19 occurrences, *Erigeron parishii* into 27 occurrences, *Eriogonum ovalifolium* var. *vineum* into 28 occurrences, *Lesquerella kingii* ssp. *bernardina* into 2 occurrences, and *Oxytheca parishii* var. *goodmaniana* into 19 occurrences. We are proposing to designate all or portions of 19 *A. albens* occurrences, 27 *Erigeron parishii* occurrences, 28 *Eriogonum ovalifolium* var. *vineum* occurrences, portions of both *L. kingii* ssp. *bernardina* occurrences, and all or portions of 18 *O. parishii* var. *goodmaniana* occurrences. We are not including one of the *O. parishii* var. *goodmaniana* occurrences because the area is considered to be too degraded and, therefore, not essential to the conservation of the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species (not all of which apply to plants). All areas proposed as critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* are within their respective historical ranges and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

Habitat components that are essential for each of the five carbonate plants are primarily found in, but not limited to, pinyon woodland, pinyon-juniper woodland and forests, Joshua tree woodland, white fir forests, subalpine forest, canyon live oak woodlands and forests, and blackbush scrub vegetation communities in the San Bernardino Mountains. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow for and maintain gene flow between sites through pollinator activity and seed dispersal mechanisms; (3) areas that provide basic requirements for growth such as water, light, minerals; and (4) areas that support pollinators and seed dispersal vectors.

The following are important to the conservation of the five carbonate plants: the conservation and management of existing population sites (USFWS 1997); the conservation and management of suitable habitat that contains micro-habitat sites that are not known to be currently occupied to maintain equilibrium between naturally occurring local extirpations and colonizations (Harrison *et al.* 2000); the protection and maintenance of upslope or upstream geologic features that provide the necessary materials to replace the soils continually lost to natural processes (65 FR 77178); the conservation and connectivity of native habitat between these occurrences to allow and maintain gene flow between sites through pollinator activity and seed dispersal mechanisms (66 FR 32052); the conservation and maintenance of sites for the survival of pollinators and seed dispersal agents (66 FR 32052); the conservation of suitable micro-habitat sites that could be colonized to allow a population to expand and contract, or maintain its normal metapopulation dynamics (Harrison *et al.* 2000); and the maintenance of normal ecological functions within all of these sites. The small fragmented range of each of these species, coupled with the other limiting ecological factors that adversely affect the chances of species survival (*e.g.,* habitat specialist, short reproductive lifespan), makes them especially vulnerable to natural and human caused effects (*e.g.,* non-native species, wildfire, livestock grazing, forest product harvesting, and mining) (Burgman *et al.,* 2001).

Based on our current knowledge of these species, the primary constituent elements of critical habitat for each species is listed below and consist of, but are not limited to:

Astragalus albens

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on hillsides or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Erigeron parishii

(1) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover.

Eriogonum ovalifolium var. *vineum*

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Lesquerella kingii ssp. *bernardina*

(1) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

Oxytheca parishii var. goodmaniana

(1) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

Criteria Used To Identify Critical Habitat

The downlisting and delisting sections of the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS 2001c, *in prep.*) for the five carbonate plants, in concert with the draft CHMS, identify the specific recovery needs of these species and facilitated the identification of areas essential to their conservation. The draft recovery plan identifies lands as essential for the long-term conservation of the carbonate plants that: (1) Contain source occurrences that must be stabilized to recover the species; (2) include habitats that were part of a historical population distribution adjacent to occupied areas and are needed for the expansion and stability of additional occurrences; and (3) provide landscape connectivity between occurrences that are required to maintain genetic exchange and the natural processes of extirpations and colonizations. To recover the carbonate plants to the point where they can be downlisted or delisted, it is essential to preserve the species' genetic diversity, as well as their habitat.

During the development of the programmatic consultation for the four southern California National Forests (USFWS 2001d) and the draft CHMS, the SBNF delineated the distribution of each of the five carbonate species and developed a model of potential suitable habitat based on geology, soil substrates, elevations, and vegetative plant communities. The SBNF ranked the relative importance of the known occurrences of carbonate plants by evaluating the size, density, location, configuration, associated species, defensibility of each occurrence, and the overall quality of the supporting habitat. Priority was also given to occurrences that maintained the ecological and geographical variability of the species (*e.g.,* highest and lowest in elevation, westernmost and easternmost in distribution) (S. Eliason, *in litt.* 2001). We used the distribution and occurrence data, modeled suitable habitat maps, and the occurrence ranking information to determine habitat areas essential to the conservation of the five carbonate plants. We used 1996 and 2000 aerial photography to remove areas with (1) Urban development; (2) active mining; and (3) other current disturbances. The 1996 imagery provided finer 1-meter resolution, while the 2000 imagery provided more recent information, but at a lower resolution. We reviewed previous section 7 consultations for the carbonate plants to remove any additional lands that were previously determined to be non-essential. The boundaries were refined to provide: (1) Adequate seed bank habitat, (2) micro-habitat sites to maintain equilibrium between naturally occurring local extirpation and colonization events, (3) connectivity of native habitat to maintain gene flow between sites through pollinator activity and seed dispersal, (4) upslope or upstream geologic substrates that provide the necessary materials to replace the soils which are continually lost to natural processes, and (5) sites for the survival of pollinators and seed dispersal agents. To map these essential lands, we overlaid them with a 100-m Universal Transverse Mercator (UTM) grid. Because the grid captured additional non-essential lands, we then evaluated all grid cells adjacent to actively disturbed areas and eliminated grid cells where either the entire cell or the majority of the cell was within a disturbed area. Cells that had documented occurrences of the carbonate plants were retained even if the majority of the cell was disturbed.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, active mines, and lands unlikely to contain the primary constituent elements essential for the conservation of each of the five carbonate plants. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of non-essential lands included in our designation. Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this proposed rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or the primary constituent elements in adjacent critical habitat.

The proposed critical habitat units described below constitute our best assessment of areas that are essential for the species' conservation. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of the mapping units may be refined.

Critical Habitat Proposal

The acreage of proposed critical habitat land ownership is shown in Table 1.

TABLE 1.—PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1].]

Species	Federal [2]	Private	Total
Astragalus albens	1,565 ha (3,870 ac)	200 ha (495 ac)	1,765 ha (4,365 ac)
Erigeron parishii	1,330 ha (3,280 ac)	460 ha (1,140 ac)	1,790 ha (4,420 ac)
Eriogonum ovalifolium var. *vineum*	2,440 ha (6,025 ac)	375 ha (930 ac)	2,815 ha (6,955 ac)
Lesquerella kingii ssp. *bernardina*	405 ha (1,005 ac)	10 ha (20 ac)	415 ha (1,025 ac)
Oxytheca parishii var. *goodmaniana*	1,085 ha (2,675 ac)	190 ha (475 ac)	1,275 ha (3,150 ac)
Total [3]	4,565 ha (11,280 ac)	770 ha (1,900 ac)	5,335 ha (13,180 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Federal lands include SBNF and BLM lands.

[3] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

The proposed critical habitat areas described below constitute our best assessment of the areas essential for the conservation of each of the five carbonate plants. The proposed critical habitat for each species is considered to be occupied by either standing plants or seeds as part of the seed bank and contains one or more of their primary constituent elements. We propose to designate approximately 5,335 ha (13,180 ac) of land as critical habitat for the five carbonate plants. The lands proposed as critical habitat have been divided into three critical habitat units: the Northeastern Slope, Bertha Ridge, and Sugarlump Ridge. The Northeastern Slope Unit contains *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* The Bertha Ridge Unit contains *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina.* The Sugarlump Ridge Unit contains *L. kingii* ssp. *bernardina.* Lands proposed as critical habitat are under Federal and private ownership. Federal lands include areas owned or managed by the SBNF and BLM.

A brief description of each unit and reasons for proposing to designate it as critical habitat are presented below.

Unit 1: Northeastern Slope Unit, San Bernardino County, California (4,850 ha (11,980 ac))

The Northeastern Slope Unit includes 115 separate polygons (subunits) around essential occurrences of the carbonate plants. The unit extends from White Mountain at the western edge to Rattlesnake Canyon at the eastern edge, a distance of approximately 40 km (25 mi). The lands within this unit contain the majority of the carbonate substrates in the carbonate belt that spans the north to northeastern slope of the San Bernardino Mountains. This unit contains four of the five carbonate plants: *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.*

This unit contains the vast majority of the known ranges of each of these four carbonate plants, including 17 of the 19 *Astragalus albens* occurrences, 22 of the 27 *Erigeron parishii* occurrences, 22 of the 28 *Eriogonum ovalifolium* var. *vineum* occurrences, and 18 of the 19 *Oxytheca parishii* var. *goodmaniana* occurrences.

This unit contains occurrences of the carbonate plants that the SBNF ranked as very important for their survival and conservation. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of (1) a large number of core occurrences and (2) the majority of the remaining additional occurrences of each of these four carbonate plants are necessary for their downlisting and/or delisting.

The persistence of metapopulation species, including the carbonate plants, depends on the combined dynamics of local extirpations and colonizations by dispersal (Given 1994; Hanski 1999; Hanksi and Gilpin 1991; McCullough 1996). Every proposed occurrence in this unit is important to maintain the natural metapopulation dynamics of local extirpation and colonization events that are necessary for the conservation of the species. Every proposed carbonate plant occurrence is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events such as have been documented in populations of five plants restricted to serpentine seeps in Napa and Solano Counties, California (Harrison *et al.* 2000). Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduce the likelihood of extirpation events.

This unit is essential to the conservation of these four carbonate plants because: (1) The majority of their known occurrences are within this unit, (2) a number of important core occurrences are found in this unit, and (3) since there is one core occurrence for three of the plants and two core areas where the fourth is known to occur, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 1 by land ownership is shown in Table 2.

TABLE 2.—PROPOSED CRITICAL HABITAT FOR UNIT 1 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA.

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within[1].]

Species	BLM	USFS	Federal total	Private	Total
Astragalus albens	345 ha (850 ac)	1,220 ha (3,020 ac)	1,565 ha (3,870 ac)	200 ha (495 ac)	1,765 ha (4,365 ac)
Erigeron parishii	390 ha (960 ac)	940 ha (2,320 ac)	1,330 ha (3,280 ac)	460 ha (1,140 ac)	1,790 ha (4,420 ac)
Eriogonum ovalifolium var. *vineum*	175 ha (430 ac)	2,120 ha (5,230 ac)	2,290 ha (5,660 ac)	375 ha (930 ac)	2,665 ha (6,590 ac)
Oxytheca parishii var. *goodmaniana*	35 ha (85 ac)	1,050 ha (2,590 ac)	1,085 ha (2,675 ac)	190 ha (475 ac)	1,275 ha (3,150 ac)
Total[2]	640 ha (1,585 ac)	3,450 ha (8,515 ac)	4,090 ha (10,100 ac)	760 ha (1,880 ac)	4,850 ha (11,980 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Unit 2: Bertha Ridge Unit, San Bernardino County, California (275 ha (685 ac))

The Bertha Ridge Unit includes four separate polygons encompassing essential occurrences of the carbonate plants. This unit is located on the north side of Big Bear Lake adjacent to Big Bear City, California. It is near the east end of Bertha Ridge on its south facing slope. The majority of lands within this unit contain soils derived from carbonate substrates (particularly dolomite) that are essential to the survival and conservation of both carbonate plant species. This unit contains essential core occurrences of two of the five carbonate plants: *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina*.

This unit contains one of the two known *Lesquerella kingii* ssp. *bernardina* occurrences. It is an essential core occurrence that may be large enough to maintain the natural dynamics of local extirpation and colonization events. This unit also contains a geographically distinct *Eriogonum ovalifolium* var. *vineum* occurrence. This is the only *E. ovalifolium* var. *vineum* occurrence found on soils primarily derived from dolomite substrates and may contain genetic characteristics essential to overall long-term conservation of the species.

Each of these occurrences have been identified by the SBNF as being very important core occurrences for the survival and conservation for each carbonate plant species. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of each of the occurrences of these two carbonate plants are necessary for their downlisting and/or delisting.

The core occurrences of the two carbonate plants in this unit are essential as sources for the re-colonization events (*e.g.*, seed dispersal) that are necessary to maintain the natural dynamics of local extirpation and colonization events. Every proposed carbonate plant occurrence in this unit is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events. Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduces the likelihood of extirpation events and/or extinction.

This unit is essential to the conservation of both of these carbonate species because: (1) It contains an essential core occurrence of each species, (2) this unit contains roughly half of the known range of *Lesquerella kingii* ssp. *bernardina*, and (3) since there are only two core areas for each of the two plants within this unit, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 2 by land ownership is shown in Table 3.

TABLE 3.—PROPOSED CRITICAL HABITAT FOR UNIT 2 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA.

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within.[1]]

Species	BLM	USFS	Federal total	Private	Total
Eriogonum ovalifolium var. *vineum*	0 ha (0 ac)	150 ha (365 ac)	150 (365 ac)	0 ha (0 ac)	150 ha (365 ac)
Lesquerella kingii ssp. *bernardina*	0 ha (0 ac)	195 ha (490 ac)	195 ha (490 ac)	10 ha (20 ac)	205 ha (510 ac)
Total[2]	0 ha (0 ac)	265 ha (665 ac)	265 ha (665 ac)	10 ha (20 ac)	275 ha (685 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Unit 3: Sugarlump Ridge Unit, San Bernardino County, California (210 ha (515 ac))

The Sugarlump Ridge Unit includes two separate polygons encompassing an essential core occurrence of the *Lesquerella kingii* ssp. *bernardina*. This unit is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge unit. The soils in this unit are primarily derived from dolomite instead of limestone. *Lesquerella kingii* ssp. *bernardina* is the only carbonate plant in this unit.

This unit contains one of the two known *Lesquerella kingii* ssp. *bernardina* occurrences. This occurrence has been identified by the SBNF as being a very important core occurrence for the survival and conservation of *L. kingii* ssp. *bernardina*. The SBNF's ranking was instrumental in our determining which occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan specifically mentions that the permanent protection of this occurrence is necessary for its downlisting or delisting.

The core *Lesquerella kingii* ssp. *bernardina* occurrence in this unit is essential as a source for the re-colonization events (*e.g.*, seed dispersal) that are necessary to maintain the natural metapopulation dynamics of local extirpation and colonization events. Every proposed occurrence of this carbonate plant is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events. Every proposed occurrence provides important genetic material through cross pollination and seed dispersal which helps maintain genetic diversity and reduces the likelihood of extirpation events.

This unit is essential to the conservation of *Lesquerella kingii* ssp. *bernardina* because: (1) It contains one of the two known occurrences of this species, (2) this unit contains roughly half of the known range of *L. kingii* ssp. *bernardina*, and (3) since there area only two core areas where this plant is know to occur, maintaining viable examples of potentially unique genetic makeup will likely prove to be essential to the long-term conservation of the species.

The acreage of proposed critical habitat for Unit 3 by land ownership is shown in Table 4.

TABLE 4.—PROPOSED CRITICAL HABITAT FOR UNIT 3 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within.[1]]

Species	BLM	USFS	Federal total	Private	Total
Lesquerella kingii ssp. *bernardina*	0 ha (0 ac)	210 ha (515 ac)	210 ha (515 ac)	0 ha (0 ac)	210 ha (515 ac)
Total[2]	0 ha (0 ac)	210 ha (515 ac)	210 ha (515 ac)	0 ha (0 ac)	210 ha (515 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of proposed critical habitat for each carbonate plant species does not equal the total area that has been proposed as critical habitat for each species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. 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 action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also

provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the 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.

Activities on Federal lands that may affect *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum*, *Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* 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 U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) 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 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 destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for the conservation of any of the five carbonate plants. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or clearing *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning, mechanical, chemical, or other means (*e.g.*, grubbing, grading, grazing, woodcutting, construction, road building and maintenance, mining, herbicide application, and weed abatement);

(2) Activities that appreciably degrade *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), including, but not limited to, mining, fire management, livestock grazing, clearing, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy/intense recreational use; and

(3) Appreciably decreasing habitat value or quality through indirect effects (*i.e.*, upslope or upstream removal of carbonate substrates, or significant watershed alteration).

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

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 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species or destroy 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, and actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of 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 almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Because all of the units we are proposing are occupied by either standing plants or seeds as part of the seed bank of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana*, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Regulation of activities affecting waters of the U.S. by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural or mining activities by Federal agencies;

(4) Development on private lands requiring permits from other Federal agencies;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Authorization of Federal grants or loans;

(7) Activities funded by the Environmental Protection Agency, Department of Energy, or any other Federal agency; and

(8) Hazard mitigation and post-disaster repairs funded by the FEMA.

Relationship to Habitat Conservation Plans and Other Planning Efforts

Exclusions Under Section 4(b)(2)

Only one HCP, *Habitat conservation plan for the federally threatened desert tortoise, Cushenbury sand and gravel quarry, San Bernardino, California* (Lilburn Corporation 1994), has been completed within the area where these five carbonate plants occur. This HCP

addresses the federally listed as threatened desert tortoise (*Gopherus agassizii*). While *Erigeron parishii* occurs within the area addressed by this HCP, neither this species nor any other carbonate plant addressed in this proposal is covered under this HCP. In the event that future HCPs are developed within the boundaries of designated critical habitat in which one or more of the carbonate plants is included as a covered species, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for their conservation by either directing development and habitat modification to non-essential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify critical habitat. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the five carbonate plants. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat preserves. We fully expect that any HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal to be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to these species due to designation;

(2) Specific information on the amount and distribution of carbonate plant habitat, and what habitat is essential to the conservation of these species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitats;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana*, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, plant-watching/botanizing, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or

reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual 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. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* were listed as endangered or threatened species in 1994. In fiscal years 1994 through 2001, we have conducted, or are in the process of conducting, an estimated seven formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii* ssp. *bernardina*, or *O. parishii* var. *goodmaniana.*

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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. Based upon our experience with the species and its habitat requirements, we conclude that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 5). Accordingly, the designation of critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* is not anticipated to have any significant incremental impacts on actions proposed by Federal agencies or non-Federal persons that receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act: see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, or *Oxytheca parishii* var. *goodmaniana* since the listing in 1994. The designation of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agencies' actions.

(c) This proposed rule, if made final, is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the critical habitat designation will have any significant incremental effects.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 5.—IMPACTS OF ASTRAGALUS ALBENS, ERIGERON PARISHII, ERIOGONUM OVALIFOLIUM VAR. VINEUM, LESQUERELLA KINGII SSP. BERNARDINA, AND OXYTHECA PARISHII VAR. GOODMANIANA LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities the Federal Government carries out such as removing, thinking, or destroying *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application) and appreciably decreasing habitat value or quality through indirect effects (*e.g.,* upslop or upstream removal of carbonate substrates, significant watershed alteration).	May result in a limited increase in the number of section 7 consultations (re-initiations or new). Since critical habitat is occupied, few to no additional activities would be affected by critical habitat.

TABLE 5.—IMPACTS OF ASTRAGALUS ALBENS, ERIGERON PARISHII, ERIOGONUM OVALIFOLIUM VAR. VINEUM, LESQUERELLA KINGII SSP. BERNARDINA, AND OXYTHECA PARISHII VAR. GOODMANIANA LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of Activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* habitat (as defined in the primary constituent elements), whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application) and appreciably decreasing habitat value or quality through indirect effects (*e.g.*, upslope or upstream removal of carbonate substrates, significant watershed alteration that require a Federal action (permit, authorization, or funding)).	May result in a limited increase in the number of section 7 consultations (re-initiations or new). Since critical habitat is occupied, few to no additional activities would be affected by critical habitat.

[1] This column represents the activities potentially affected by listing the *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* as endangered or threatened species (August 24, 1994, 59 FR 43652) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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 proposed rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for making this certification.

We must determine whether the proposed rulemaking will affect a substantial number of small entities. 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 121.201). 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. If the proposed rulemaking will affect a substantial number of small entities, we must determine if there will be a significant economic impact on them.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development; grazing; mining; timber harvesting; low-, moderate-, and high-impact recreation; placement of communication towers; peak energy production plants). We apply the ''substantial number'' test individually to each industry to determine if a certification of no significant effect is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the proposed critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana.* If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger significant additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger significant additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. Since the listing of

the five carbonate plants in August 1994 (59 FR 43652), we have completed approximately six consultations involving the carbonate plants. Of these, four were with the USFS, one was with the BLM, and one was an intra-Service consultation on the issuance of a 10(a)(1)(B) permit. Due to this consultation history we know what land uses have triggered consultations in the past and we can estimate land uses that may trigger consultations in the future. Land uses that have triggered these consultations include: Livestock grazing; wild burro management; forest road and trail use, maintenance, and construction; special use permits (recreation and non-recreation); forest product harvesting (*e.g.,* fuelwood collection) and commercial mining (limestone).

We believe that the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities. We analyzed the consultations and attempted to determine which entities are involved in the consultations. There were six grazing permits on the SBNF as of 1998. Since that time, four areas with grazing permits have been closed. Of the two remaining grazing permits, only one is within areas proposed as critical habitat. This single grazing permit is not affecting a substantial number of small entities. The SBNF uses its own employees for wild burro management. No small entities are involved with this activity.

The SBNF separates special use permits (SUP) into two categories: Recreation and non-recreation. The recreation SUPs are usually of short duration and the majority of activities covered by them occur on existing roads and trails and will not be affected by critical habitat. Several times a year, the SBNF will issue SUPs that involve activities off-trail or off-road; however, several years ago the SBNF stopped issuing SUPs for activities that would occur in carbonate plant habitat. Therefore, we do not anticipate that this critical habitat designation will affect a substantial number of small entities involved in recreation activities. The non-recreation SUPs are generally long-term. These SUPs are issued for major projects that occur on Forest Service lands (*i.e.,* power lines, pipelines, roads, sewer lines, and other utilities). These SUPs generally involve entities such as Verizon Wireless, Southern California Edison Company, Pacific Gas and Electric, and California Department of Transportation. The vast majority of these SUPs are for activities that occur outside of carbonate plant habitat. Since the majority of these entities are not considered small and the majority of these activities occur outside of carbonate plant habitat, critical habitat is not anticipated to affect a substantial number of small entities involved in major infrastructure development.

Forest product harvesting involves activities such as fire wood collecting, the clearing of deadwood in post-fire areas, and commercial seed collecting. The SBNF stopped allowing these activities in areas with carbonate plant habitats in 1998, but still allows them to occur in non-carbonate plant habitat. Therefore, critical habitat will not affect a substantial number of small entities that rely on forest product harvesting activities.

The SBNF has records of over 200 mining claims in carbonate plant habitats. These claims are held by entities ranging from individuals, to small clubs (*i.e.,* hobby gold mining clubs), to large multi-national corporations (*e.g.,* Mitsubishi). If mines on these claims will have significant ground disturbing activities, they are required to complete a Plan of Operation (PoO; this is the standard acronym used by the BLM and USFS as per 36 CFR 2800). Significant ground-disturbing activities is defined as 2 ha (5 ac) by the BLM and discretional to the Forest Officer for the USFS. Entities that will not have significant ground-disturbing activities are not required to complete a PoO, and thus these mining activities would not likely trigger any section 7 consultation requirement. To date, only three entities (Mitsubishi, Omya, and Specialty Minerals, Inc.) have filed PoOs with the SBNF, and none qualify as a small entity. Approximately 134 (63%) of the claims are owned or leased by entities that do not qualify as a small entity. The remaining 79 (37%) of the claims are either idle or have not submitted a PoO. Due to the significant cost of limestone mining, we do not expect individual claimants or other small entities to mine the claims without either associating with a large business or leasing their claim to a large business. Therefore, critical habitat will not affect a substantial number of small entities that rely on significant ground-disturbing activities such as mining.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. We have only proposed to designate occupied habitat, therefore, we do not anticipate that critical habitat will trigger significant additional review of Federal activities under section 7 of the Act. Therefore, for the purposes of this review and certification under the RFA, we are assuming that any future consultations in the area proposed as critical habitat will be due jointly to both the presence of at least one of the five listed carbonate plants and its corresponding critical habitat. Because of our consultation history, we project that the future land uses in this area will be similar to the land uses that have occurred since 1994. With the development and completion of the CHMS (which will focus mining and other activities to minimize the threats within carbonate habitats), we anticipate that there will not be any additional land uses within the area proposed as critical habitat for the carbonate plants. Of all of these activities, we only expect that one additional small entity may be affected by this designation. We anticipate that one entity, not associated with a major business entity, will request a PoO approval. This entity will first have to comply with the National Environmental Policy Act and a section 7 consultation may be required, because the area under consideration is currently occupied by one or more of the five listed carbonate plants. We are not aware of any other small entities that will be conducting activities within the area proposed for designation of critical habitat for the carbonate plants. We are not aware of a significant number of future activities that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an

exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives, because none of our previous consultations on any of the five carbonate plants has required reasonable and prudent alternatives. The kinds of actions that may be identified in future reasonable and prudent alternatives are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. They include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not significantly affect a substantial number of small entities because most of the entities that conduct activities in carbonate plant habitat either have already consulted with us or they do not qualify as a small entity. Additionally, we are working towards a management plan with the other stakeholders (*e.g.,* SBNF, BLM, mining interests) for the carbonate plant habitat.

This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We anticipate that the kinds of reasonable and prudent alternatives we would provide can usually be implemented at very low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* will not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis is not required for this proposed designation.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we will determine whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because the area within the proposed critical habitat is mined for limestone (for use in pharmaceuticals and aggregate production) and not energy producing minerals (*e.g.,* coal, petroleum products), this proposed rule is not expected to significantly affect energy supplies, distribution, or use; this action is not a significant energy action; and no Statement of Energy Effects is required. Additionally, the area proposed as critical habitat is occupied by listed species, therefore, any required section 7 consultation by a Federal agency undertaking an action in this area would initially be triggered by the presence of the listed species and not solely by this proposed designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that their proposed activities require Federal funds, permits or other authorization. Activities with a Federal nexus may not destroy or adversely modify critical habitat. However, as discussed previously, these activities are currently subject to equivalent restrictions as a result of the listing of the species, and no further restrictions are anticipated.

(b) This rule, as proposed, will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing to designate a total of 5,336 ha (13,180 ac) of lands in San Bernardino County, California, as

critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium var. vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* in a takings implication assessment. The takings implication assessment concludes that this proposed rule does not pose a significant takings implication for lands proposed as critical habitat for these five carbonate plants.

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 policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While 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 Department of the Interior's 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 are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* or *Oxytheca parishii* var. *goodmaniana* because no Tribal lands support populations or provide essential habitat for the five carbonate plants. Therefore, critical habitat for *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii ssp. bernardina,* or *O. parishii* var. *goodmaniana* has not been proposed on Tribal lands.

References Cited

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

Author

The primary author of this proposed rule is Mark A. Elvin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus albens	Cushenbury milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	548	17.96(b)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Erigeron parishii	Parish's daisy	U.S.A. (CA)	Asteraceae—Sunflower.	T	548	17.96(b)	NA
*	*	*	*	*	*		*
Eriogonum ovalifolium var. *vineum*.	Cushenbury buckwheat.	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	548	17.96(b)	NA
*	*	*	*	*	*		*
Lesquerella kingii ssp. *bernardina*.	San Bernardino Mountains bladderpod.	U.S.A. (CA)	Brassicaceae—Mustard.	E	548	17.96(b)	NA
*	*	*	*	*	*		*
Oxytheca parishii var. *goodmaniana*.	Cushenbury oxytheca.	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	548	17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* under paragraph (a) by adding entries for *A. albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, L. kingii* ssp. *bernardina,* and *O. parishii* var. *goodmaniana* in alphabetical order by family under Asteraceae, Brassicaceae, Fabaceae, and Polygonaceae (respectively) to read as follows:

§ 17.96 Critical habitat—plants.

(a)

(2)* * *

(i)* * *

Family Asteraceae: *Erigeron parishii* (Parish's daisy)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Erigeron parishii* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

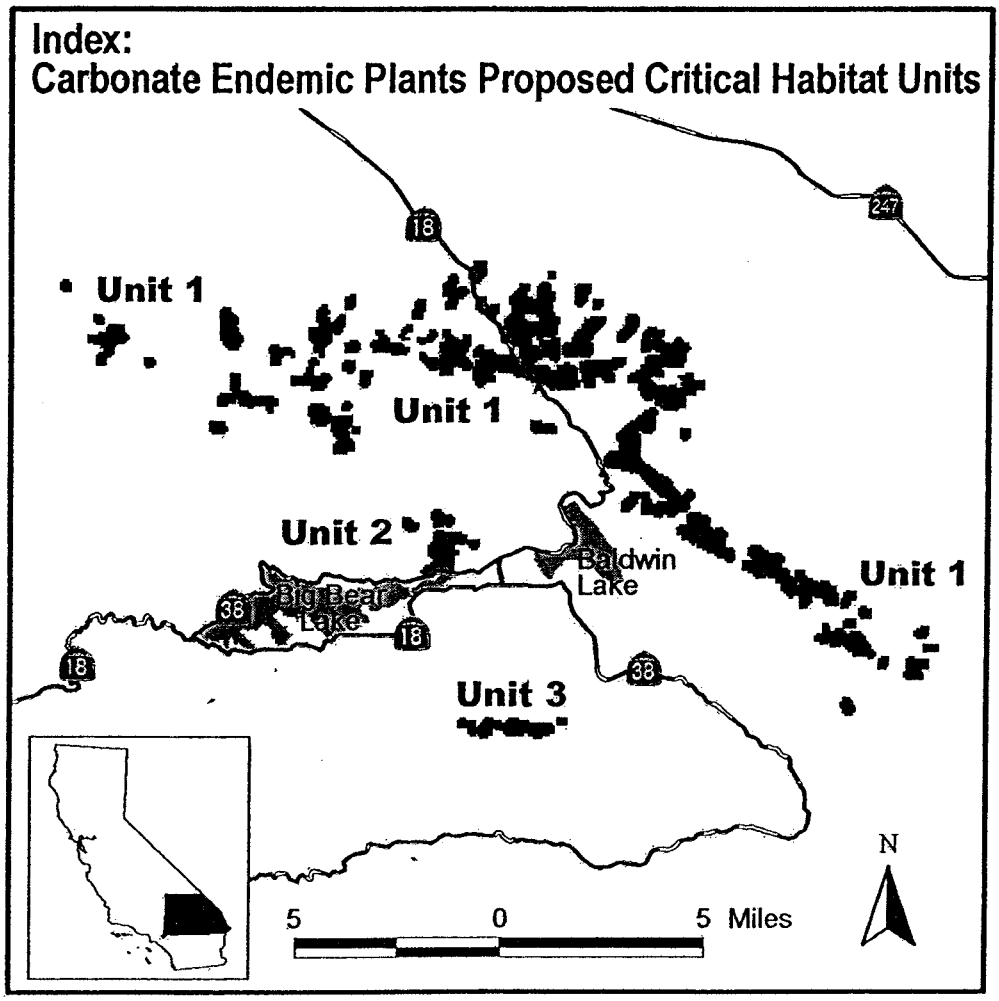
(*1*) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Map 1 follows. [index map]



(E) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 507200, 3802000; 507400, 3802000; 507400, 3801800; 507500, 3801800; 507500, 3801600; 507400, 3801600; 507400, 3801500; 507500, 3801500; 507500, 3801200; 507600, 3801200; 507600, 3801300; 507700, 3801300; 507700, 3801400; 507800, 3801400; 507800, 3801500; 507900, 3801500; 507900, 3801600; 508100, 3801600; 508100, 3801100; 508000, 3801100; 508000, 3800900; 507900, 3800900; 507900, 3800800; 507700, 3800800; 507700, 3800900; 507600, 3800900; 507600, 3801000; 507500, 3801000; 507500, 3800700; 507400, 3800700; 507400, 3800300; 507300, 3800300; 507300, 3799900; 507100, 3799900; 507100, 3800100; 506900, 3800100; 506900, 3800500; 506800, 3800500; 506800, 3800700; 506700, 3800700; 506700, 3801100; 507100, 3801100; 507100, 3801400; 507000, 3801400; 507000, 3801800; 507100, 3801800; 507100, 3801900; 507200, 3801900; and 507200, 3802000.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3802400; 508500, 3802400; 508500, 3801900; 508400, 3801900; 508400, 3801800; 508100, 3801800; 508100, 3802300; 508300, 3802300; and 508300, 3802400.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 509700, 3800500; 510200, 3800500; 510200, 3800200; 510100, 3800200; 510100, 3800100; 509700, 3800100; and 509700, 3800500.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 510300, 3801000; 510500, 3801000; 510500, 3800800; 510300, 3800800; and 510300, 3801000.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3802200; 511200, 3802200; 511200, 3801700; 511100, 3801700; 511100, 3801400; 510700, 3801400; 510700, 3801800; 510800, 3801800; 510800, 3802100; 510900, 3802100; and 510900, 3802200.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 511400, 3801000; 511600, 3801000; 511600, 3800900; 511700, 3800900; 511700, 3800700; 511600, 3800700; 511600, 3800600; 511500, 3800600; 511500, 3800500; 511200, 3800500; 511200, 3800400; 511000, 3800400; 511000, 3800500; 510900, 3800500; 510900, 3800600; 511000, 3800600; 511000, 3800700; 511300, 3800700; 511300, 3800800; 511400, 3800800; and 511400, 3801000.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 511800, 3800000; 512200, 3800000; 512200, 3799900; 512300, 3799900; 512300, 3799800; 512400, 3799800; 512400, 3799500; 512300, 3799500; 512300, 3799400; 511900, 3799400; 511900, 3799500; 511700, 3799500; 511700, 3799400; 511500, 3799400; 511500, 3799500; 511400, 3799500; 511400, 3799600; 511300, 3799600; 511300, 3799800; 511800, 3799800; and 511800, 3800000.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 512100, 3800700; 512400, 3800700; 512400, 3800600; 512500, 3800600; 512500, 3800400; 512600, 3800400; 512600, 3800300; 512700, 3800300; 512700, 3800100; 512600, 3800100; 512600, 3800000; 512300, 3800000; 512300, 3800300; 512200, 3800300; 512200, 3800200; 512100, 3800200; 512100, 3800100; 511900, 3800100; 511900, 3800200; 511800, 3800200; 511800, 3800400; 511900, 3800400; 511900, 3800500; 512100, 3800500; and 512100, 3800700.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 512200, 3803200; 512400, 3803200; 512400, 3803100; 512500, 3803100; 512500, 3802800; 512400, 3802800; 512400, 3802600; 512500, 3802600; 512500, 3802700; 512800, 3802700; 512800, 3802600; 512900, 3802600; 512900, 3802400; 512800, 3802400; 512800, 3802300; 512700, 3802300; 512700, 3802200; 512500, 3802200; 512500, 3802000; 512400, 3802000; 512400, 3801800; 512000, 3801800; 512000, 3802100; 512100, 3802100; 512100, 3802300; 511900, 3802300; 511900, 3802800; 512000, 3802800; 512000, 3802900; 512100, 3802900; 512100, 3803100; 512200, 3803100; and 512200, 3803200.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3802300; 513600, 3802300; 513600, 3802000; 513700, 3802000; 513700, 3801900; 513800, 3801900; 513800, 3802000; 514100, 3802000; 514100, 3801600; 514000, 3801600; 514000, 3801400; 513800, 3801400; 513800, 3801500; 513600, 3801500; 513600, 3801600; 513400, 3801600; 513400, 3801700; 513300, 3801700; 513300, 3801800; 513200, 3801800; 513200, 3802200; 513300, 3802200; and 513300, 3802300.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 515800, 3802900; 516000, 3802900; 516000, 3802800; 516100, 3802800; 516100, 3802500; 516300, 3802500; 516300, 3802200; 516000, 3802200; 516000, 3802000; 516100, 3802000; 516100, 3801900; 516200, 3801900; 516200, 3801700; 516300, 3801700; 516300, 3801500; 516400, 3801500; 516400, 3800800; 516300, 3800800; 516300, 3800700; 516000, 3800700; 516000, 3801300; 515900, 3801300; 515900, 3801400; 515800, 3801400; 515800, 3801600; 515700, 3801600; 515700, 3801700; 515100, 3801700; 515100, 3801800; 515000, 3801800; 515000, 3801500; 515100, 3801500; 515100, 3801200; 515000, 3801200; 515000, 3801100; 514900, 3801100; 514900, 3800700; 514400, 3800700; 514400, 3801000; 514300, 3801000; 514300, 3801400; 514400, 3801400; 514400, 3801500; 514500, 3801500; 514500, 3801600; 514600, 3801600; 514600, 3802100; 514700, 3802100; 514700, 3802400; 514800, 3802400; 514800, 3802600; 514900, 3802600; 514900, 3802800; 515300, 3802800; 515300, 3802500; 515200, 3802500; 515200, 3802300; 515400, 3802300; 515400, 3802200; 515500, 3802200; 515500, 3802100; 515600, 3802100; 515600, 3802700; 515700, 3802700; 515700, 3802800; 515800, 3802800; and 515800, 3802900.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 515600, 3801200; 515900, 3801200; 515900, 3800800; 515500, 3800800; 515500, 3801100; 515600, 3801100; and 515600, 3801200.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 514900, 3799900; 514900, 3800000; 515000, 3800000; 515000, 3800200; 514900, 3800200; 514900, 3800500; 515000, 3800500; 515000, 3800600; 515400, 3800600; 515400, 3800200; 515500, 3800200; 515500, 3799700; 515400, 3799700; 515400, 3799600; 516000, 3799600; 516000, 3799500; 516100, 3799500; 516100, 3799200; 516500, 3799200; 516500, 3799100; 516600, 3799100; 516600, 3798900; 516500, 3798900; 516500, 3798800; 516200, 3798800; 516200, 3798900; 516000, 3798900; 516000, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3799100; 515600, 3799100; 515600, 3799000; 515200, 3799000; 515200, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514100, 3799300; 514100, 3799400; 514000, 3799400; 514000, 3799300; 513600, 3799300; 513600, 3799400; 513500, 3799400; 513500, 3799600; 513600, 3799600; 513600, 3799700; 513500, 3799700; 513500, 3800000; 513600, 3800000; 513600, 3800100; 513700, 3800100; 513700, 3800200; 513900, 3800200; 513900, 3800000; 514700, 3800000; 514700, 3799900; and 514900, 3799900; excluding land bounded by 514900, 3799900; 514900, 3799700; 515000, 3799700; 515000, 3799900; and 514900, 3799900.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 517300, 3801000; 517800, 3801000; 517800, 3800600; 517600, 3800600; 517600, 3800300; 517500, 3800300; 517500, 3800200; 517000, 3800200; 517000, 3800700; 517100, 3800700; 517100, 3800800; 517200, 3800800; 517200, 3800900; 517300, 3800900; and 517300, 3801000.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3801600; 519500, 3801600; 519500, 3801500; 519600, 3801500; 519600, 3801100; 519500, 3801100; 519500, 3800900; 519400, 3800900; 519400, 3800800; 519300, 3800800; 519300, 3800700; 519200, 3800700; 519200, 3800600; 519100, 3800600; 519100, 3800500; 518800, 3800500; 518800, 3800900; 518900, 3800900; 518900, 3801000; 519000, 3801000; 519000, 3801100; 519100, 3801100; 519100, 3801500; 519200, 3801500; and 519200, 3801600.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3801100; 520300, 3801100; 520300, 3800700; 520100, 3800700; 520100, 3800600; 519900, 3800600; 519900, 3800700; 519800, 3800700; 519800, 3800900; 519900, 3800900; 519900, 3801000; 520000, 3801000; and 520000, 3801100.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 521100, 3800700; 521300, 3800700; 521300, 3800600; 521400, 3800600; 521400, 3800500; 521600, 3800500; 521600, 3800300; 521700, 3800300; 521700, 3800200; 521600, 3800200; 521600, 3800100; 521500, 3800100; 521500, 3800000; 521300, 3800000; 521300, 3799900; 521200, 3799900; 521200, 3799700; 521000, 3799700; 521000, 3799600; 520900, 3799600; 520900, 3799500; 520500, 3799500; 520500, 3799100; 520300, 3799100; 520300, 3799300; 520200, 3799300; 520200, 3799200; 520000, 3799200; 520000, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798600; 520800, 3798600; 520800, 3798700; 521500, 3798700; 521500, 3798800; 521300, 3798800; 521300, 3798900; 521700, 3798900; 521700, 3799000; 522000, 3799000; 522000, 3798900; 522100, 3798900; 522100, 3798700; 522000, 3798700; 522000, 3798600; 521900, 3798600; 521900, 3798400; 521500, 3798400; 521500, 3798100; 521300, 3798100; 521300, 3798000; 521200, 3798000; 521200, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798100; 520400, 3798100; 520400, 3798200; 520300, 3798200; 520300, 3798400; 520200, 3798400; 520200, 3798500; 520100, 3798500; 520100, 3798600; 519600, 3798600; 519600, 3798900; 519200, 3798900; 519200, 3799200; 519300, 3799200; 519300, 3799300; 519500, 3799300; 519500, 3799400; 519700, 3799400; 519700, 3799500; 519900, 3799500; 519900, 3799600; 520100, 3799600; 520100, 3799700; 520300, 3799700; 520300, 3799800; 520400,

3799800; 520400, 3799900; 520500, 3799900; 520500, 3800100; 520600, 3800100; 520600, 3800300; 520800, 3800300; 520800, 3800400; 520900, 3800400; 520900, 3800500; 521000, 3800500; 521000, 3800600; 521100, 3800600; and 521100, 3800700.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3797300; 519600, 3797300; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796600; 519300, 3796600; 519300, 3796500; 519500, 3796500; 519500, 3796400; 519600, 3796400; 519600, 3796100; 519700, 3796100; 519700, 3796000; 519600, 3796000; 519600, 3795400; 519300, 3795400; 519300, 3795500; 518500, 3795500; 518500, 3795900; 518800, 3795900; 518800, 3796000; 519000, 3796000; 519000, 3796100; 519100, 3796100; 519100, 3796200; 519200, 3796200; 519200, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796900; 518900, 3796900; 518900, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; and 519200, 3797300.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3797600; 520300, 3797600; 520300, 3797100; 520100, 3797100; 520100, 3797000; 520000, 3797000; 520000, 3796900; 519800, 3796900; 519800, 3797000; 519700, 3797000; 519700, 3797400; 519800, 3797400; 519800, 3797500; 520000, 3797500; and 520000, 3797600.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3797100; 521700, 3797100; 521700, 3796700; 521600, 3796700; 521600, 3796600; 521400, 3796600; 521400, 3796700; 521300, 3796700; and 521300, 3797100.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3794600; 519700, 3794600; 519700, 3794300; 519600, 3794300; 519600, 3794100; 519500, 3794100; 519500, 3794000; 519400, 3794000; 519400, 3793900; 519300, 3793900; 519300, 3793800; 519000, 3793800; 519000, 3794200; 519100, 3794200; 519100, 3794300; 519200, 3794300; 519200, 3794400; 519300, 3794400; and 519300, 3794600.

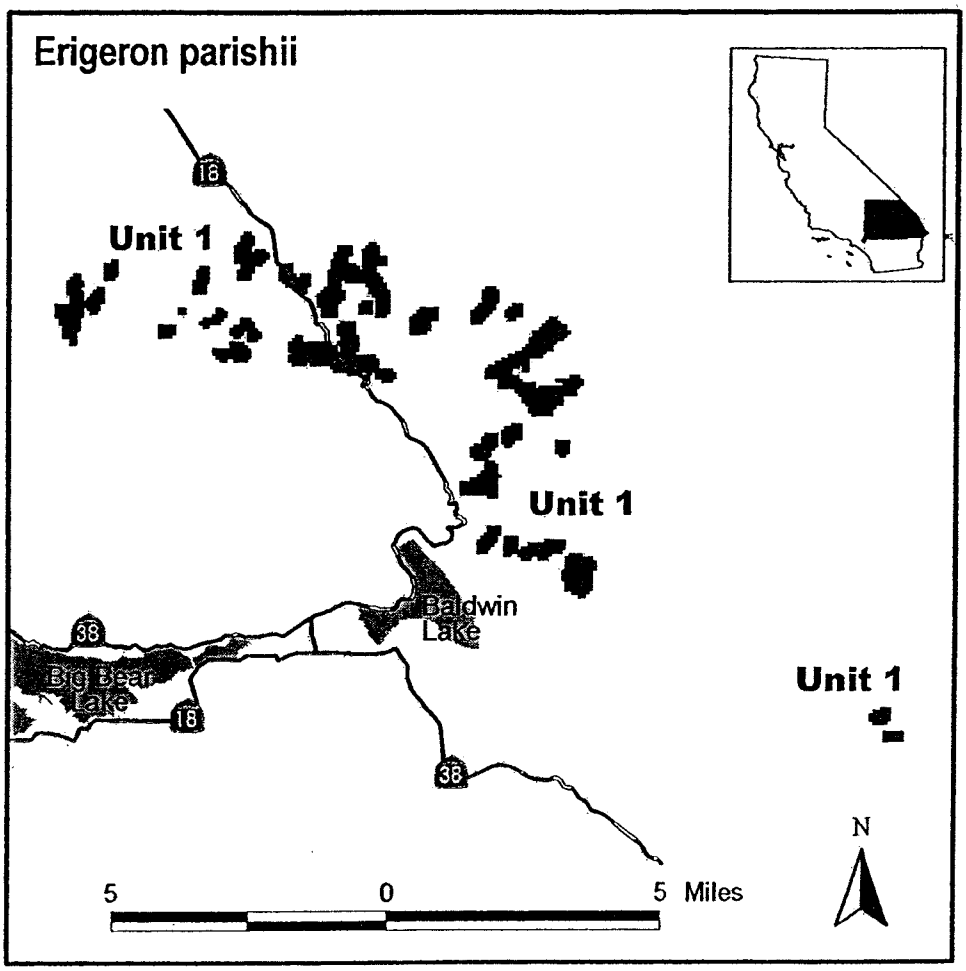
Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794300; 520200, 3794300; 520200, 3793900; 520300, 3793900; 520300, 3794000; 520500, 3794000; 520500, 3794100; 521000, 3794100; 521000, 3794200; 521600, 3794200; 521600, 3793900; 521500, 3793900; 521500, 3793800; 521200, 3793800; 521200, 3793700; 521100, 3793700; 521100, 3793600; 520800, 3793600; 520800, 3793700; 520600, 3793700; 520600, 3793600; 520300, 3793600; 520300, 3793700; 520200, 3793700; 520200, 3793800; 520000, 3793800; 520000, 3793700; 519800, 3793700; and 519800, 3794300.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 521700, 3793800; 522100, 3793800; 522100, 3793700; 522400, 3793700; 522400, 3793600; 522500, 3793600; 522500, 3793300; 522400, 3793300; 522400, 3792700; 522300, 3792700; 522300, 3792600; 522200, 3792600; 522200, 3792500; 522000, 3792500; 522000, 3792600; 521800, 3792600; 521800, 3792700; 521600, 3792700; 521600, 3793000; 521500, 3793000; 521500, 3793300; 521600, 3793300; 521600, 3793700; 521700, 3793700; and 521700, 3793800.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 530800, 3789300; 531100, 3789300; 531100, 3788900; 531000, 3788900; 531000, 3788800; 530600, 3788800; 530600, 3788900; 530500, 3788900; 530500, 3789100; 530600, 3789100; 530600, 3789200; 530800, 3789200; and 530800, 3789300.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 530900, 3788600; 531500, 3788600; 531500, 3788300; 530900, 3788300; and 530900, 3788600.

(*2*) Erigeron parishii Map follows.



Family Brassicaceae: *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains Bladderpod)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Lesquerella kingii* ssp. *bernardina*, are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Bertha Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California.

Subunit 2a: land bounded by the following UTM11 NAD27 coordinates (E, N): 510400, 3793600; 510700, 3793600; 510700, 3793500; 510800, 3793500; 510800, 3793400; 511000, 3793400; 511000, 3793100; 510900, 3793100; 510900, 3793000; 510600, 3793000; 510600, 3793100; 510500, 3793100; 510500, 3793200; 510400, 3793200; and 510400, 3793600.

Subunit 2b: land bounded by the following UTM11 NAD27 coordinates (E, N): 511600, 3793900; 511900, 3793900; 511900, 3793800; 512000, 3793800; 512000, 3793700; 512300, 3793700; 512300, 3793600; 512400, 3793600; 512400, 3793300; 512300, 3793300; 512300, 3793200; 512100, 3793200; 512100, 3793300; 512000, 3793300; 512000, 3793200; 511600, 3793200; 511600, 3793500; 511500, 3793500; 511500, 3793800; 511600, 3793800; and 511600, 3793900.

Subunit 2c: land bounded by the following UTM11 NAD27 coordinates (E, N): 511700, 3793100; 512000, 3793100; 512000, 3793000; 512200, 3793000; 512200, 3792700; 512100, 3792700; 512100, 3792500; 511900, 3792500; 511900, 3792300; 512600, 3792300; 512600, 3792100; 512400, 3792100; 512400, 3791400; 512100, 3791400; 512100, 3791500; 511900, 3791500; 511900, 3791400; 511700,

3791400; 511700, 3791300; 511600, 3791300; 511600, 3791200; 511200, 3791200; 511200, 3791400; 511100, 3791400; 511100, 3791500; 511200, 3791500; 511200, 3791600; 511300, 3791600; 511300, 3791700; 511600, 3791700; 511600, 3792300; 511500, 3792300; 511500, 3792500; 511600, 3792500; 511600, 3792600; 511700, 3792600; 511700, 3792700; 511600, 3792700; 511600, 3793000; 511700, 3793000; and 511700, 3793100.

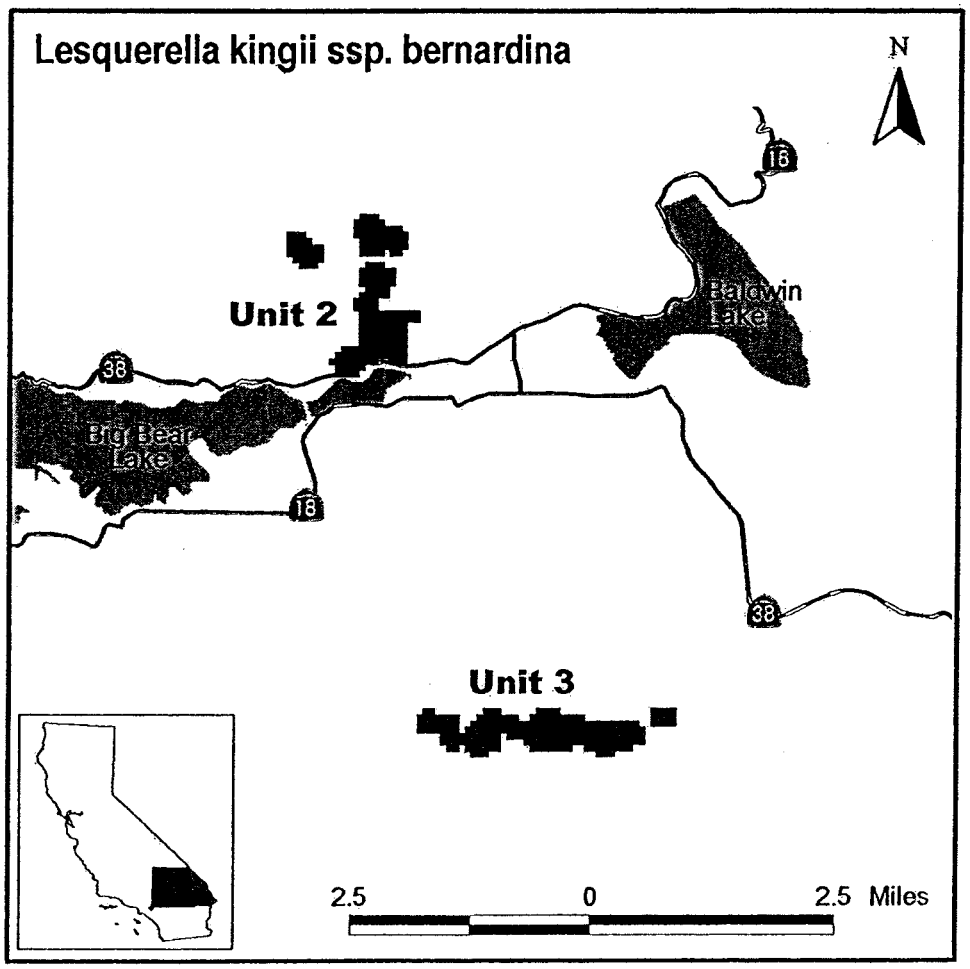
(E) Sugarlump Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle map Moonridge, California.

Subunit 3a: land bounded by the following UTM11 NAD27 coordinates (E, N): 512700, 3785700; 512900, 3785700; 512900, 3785600; 513300, 3785600; 513300, 3785300; 513400, 3785300; 513400, 3785400; 513500, 3785400; 513500, 3785500; 513600, 3785500; 513600, 3785600; 513700, 3785600; 513700, 3785700; 514000, 3785700; 514000, 3785600; 514300, 3785600; 514300, 3785500; 514500, 3785500; 514500, 3785600; 514600, 3785600; 514600, 3785700; 515000, 3785700; 515000, 3785600; 515400, 3785600; 515400, 3785500; 516300, 3785500; 516300, 3785400; 516400, 3785400; 516400, 3785100; 516200, 3785100; 516200, 3785000; 515900, 3785000; 515900, 3784900; 515600, 3784900; 515600, 3785000; 515400, 3785000; 515400, 3785100; 515200, 3785100; 515200, 3785000; 514500, 3785000; 514500, 3785100; 514400, 3785100; 514400, 3785200; 514100, 3785200; 514100, 3785300; 514000, 3785300; 514000, 3785000; 513800, 3785000; 513800, 3784900; 513500, 3784900; 513500, 3785000; 513400, 3785000; 513400, 3785100; 513300, 3785100; 513300, 3785000; 513100, 3785000; 513100, 3785100; 513000, 3785100; 513000, 3785300; 512600, 3785300; 512600, 3785600; 512700, 3785600; and 512700, 3785700.

Subunit 3b: land bounded by the following UTM11 NAD27 coordinates (E, N): 516500, 3785700; 516900, 3785700; 516900, 3785400; 516500, 3785400; and 516500, 3785700.

(*2*) *Lesquerella kingii* ssp. *bernardina* Map follows.



Family Fabaceae: *Astragalus albens* (Cushenbury Milk-Vetch)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Astragalus albens,* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on hillsides or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered

by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.,* leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, and Cougar Buttes, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 503300, 3801900; 503600, 3801900; 503600, 3801700; 503700, 3801700; 503700, 3801600; 503800, 3801600; 503800, 3801500; 503900, 3801500; 503900, 3801200; 503800, 3801200; 503800, 3801100; 503900, 3801100; 503900, 3800900; 504000, 3800900; 504000, 3800800; 504100, 3800800; 504100, 3800500; 504000, 3800500; 504000, 3800300; 503900, 3800300; 503900, 3800200; 503500, 3800200; 503500, 3800300; 503400, 3800300; 503400, 3800400; 503300, 3800400; 503300, 3800600; 503200, 3800600; 503200, 3801800; 503300, 3801800; and 503300, 3801900.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 507000, 3801600; 507400, 3801600; 507400, 3801300; 507500, 3801300; 507500, 3800900; 507600, 3800900; 507600, 3800500; 507500, 3800500; 507500, 3800400; 507400, 3800400; 507400, 3800300; 507300, 3800300; 507300, 3800200; 507200, 3800200; 507200, 3800100; 507100, 3800100; 507100, 3800200; 507000, 3800200; 507000, 3800500; 506800, 3800500; 506800, 3800600; 506700, 3800600; 506700, 3801100; 506900, 3801100; 506900, 3801000; 507100, 3801000; 507100, 3801300; 507000, 3801300; and 507000, 3801600.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 513100, 3803700; 513600, 3803700; 513600, 3803100; 513500, 3803100; 513500, 3803000; 513400, 3803000; 513400, 3802900; 513300, 3802900; 513300, 3802800; 513100, 3802800; 513100, 3802900; 513000, 3802900; 513000, 3803000; 512900, 3803000; 512900, 3803400; 513000, 3803400; 513000, 3803500; 513100, 3803500; and 513100, 3803700.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3803300; 516300, 3803300; 516300, 3803000; 516000, 3803000; and 516000, 3803300.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3802600; 515200, 3802600; 515200, 3802200; 515100, 3802200; 515100, 3801900; 515300, 3801900; 515300, 3802000; 515400, 3802000; 515400, 3801900; 515500, 3801900; 515500, 3801600; 515100, 3801600; 515100, 3801500; 514800, 3801500; 514800, 3801600; 514700, 3801600; 514700, 3801900; 514600, 3801900; 514600, 3802000; 514500, 3802000; 514500, 3802300; 514600, 3802300; 514600, 3802400; 514700, 3802400; 514700, 3802500; 514800, 3802500; and 514800, 3802600.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3802500; 516200, 3802500; 516200, 3802400; 516300, 3802400; 516300, 3802100; 516200, 3802100; 516200, 3801900; 515800, 3801900; 515800, 3801800; 515700, 3801800; 515700, 3801900; 515600, 3801900; 515600, 3802100; 515500, 3802100; 515500, 3802200; 515600, 3802200; 515600, 3802300; 515900, 3802300; 515900, 3802400; 516000, 3802400; and 516000, 3802500.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 513700, 3800000; 514100, 3800000; 514100, 3799900; 514300, 3799900; 514300, 3799800; 514700, 3799800; 514700, 3799500; 514800, 3799500; 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514500, 3799400; 514500, 3799300; 514100, 3799300; 514100, 3799500; 514000, 3799500; 514000, 3799400; 513800, 3799400; 513800, 3799500; 513700, 3799500; and 513700, 3800000.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 515200, 3801300; 515500, 3801300; 515500, 3801200; 515600, 3801200; 515600, 3800800; 515500, 3800800; 515500, 3800700; 515400, 3800700; 515400, 3800400; 515300, 3800400; 515300, 3800300; 515400, 3800300; 515400, 3800200; 515500, 3800200; 515500, 3799600; 515600, 3799600; 515600, 3799500; 515900, 3799500; 515900, 3799400; 516300, 3799400; 516300, 3799200; 516500, 3799200; 516500, 3799000; 516700, 3799000; 516700, 3799600; 517100, 3799600; 517100, 3799400; 517200, 3799400; 517200, 3799300; 517100, 3799300; 517100, 3799200; 517200, 3799200; 517200, 3798900; 517100, 3798900; 517100, 3798600; 516500, 3798600; 516500, 3798900; 516400, 3798900; 516400, 3798800; 516200, 3798800; 516200, 3798900; 515400, 3798900; 515400, 3799000; 515300, 3799000; 515300, 3799100; 515200, 3799100; 515200, 3799600; 515100, 3799600; 515100, 3799700; 515000, 3799700; 515000, 3800100; 514900, 3800100; 514900, 3800800; 514800, 3800800; 514800, 3800700; 514600, 3800700; 514600, 3800800; 514500, 3800800; 514500, 3801000; 514600, 3801000; 514600, 3801100; 514800, 3801100; 514800, 3801000; 514900, 3801000; 514900, 3801100; 515100, 3801100; 515100, 3801200; 515200, 3801200; and 515200, 3801300.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 517200, 3802800; 517700, 3802800; 517700, 3802400; 517600, 3802400; 517600, 3802100; 517500, 3802100; 517500, 3802000; 517400, 3802000; 517400, 3801900; 517200, 3801900; 517200, 3802000; 517100, 3802000; 517100, 3802700; 517200, 3802700; and 517200, 3802800.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3802200; 518200, 3802200; 518200, 3801900; 518100, 3801900; 518100, 3801800; 517800, 3801800; and 517800, 3802200.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 517700, 3801500; 518300, 3801500; 518300, 3801200; 518200, 3801200; 518200, 3801100; 518100, 3801100; 518100, 3801000; 518000, 3801000; 518000, 3800900; 517900, 3800900; 517900, 3800800; 517800, 3800800; 517800, 3800600; 517700, 3800600; 517700, 3800500; 517800, 3800500; 517800, 3800000; 517700, 3800000; 517700, 3799900; 517300, 3799900; 517300, 3800000; 517200, 3800000; 517200, 3799900; 516800, 3799900; 516800, 3800000; 516700, 3800000; 516700, 3800200; 517100, 3800200; 517100, 3800900; 517200, 3800900; 517200, 3801000; 517400, 3801000; 517400, 3801200; 517500, 3801200; 517500, 3801400; 517700, 3801400; and 517700, 3801500.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3799800; 518600, 3799800; 518600, 3799500; 518500, 3799500; 518500, 3799400; 518400,

3799400; 518400, 3799300; 518200, 3799300; 518200, 3799100; 517900, 3799100; 517900, 3798700; 517500, 3798700; 517500, 3798900; 517400, 3798900; 517400, 3799600; 517700, 3799600; 517700, 3799700; 517800, 3799700; and 517800, 3799800.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 520200, 3801000; 520600, 3801000; 520600, 3800700; 520500, 3800700; 520500, 3800600; 520600, 3800600; 520600, 3800500; 520800, 3800500; 520800, 3800400; 520900, 3800400; 520900, 3800300; 521100, 3800300; 521100, 3800200; 521200, 3800200; 521200, 3800000; 521100, 3800000; 521100, 3799900; 520800, 3799900; 520800, 3800100; 520300, 3800100; 520300, 3800200; 520200, 3800200; 520200, 3800300; 520100, 3800300; 520100, 3800200; 519800, 3800200; 519800, 3800700; 520100, 3800700; 520100, 3800600; 520200, 3800600; and 520200, 3801000.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3799300; 519600, 3799300; 519600, 3798900; 519300, 3798900; 519300, 3799000; 519200, 3799000; 519200, 3799200; 519300, 3799200; and 519300, 3799300.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3800000; 520400, 3800000; 520400, 3799900; 520500, 3799900; 520500, 3799700; 520400, 3799700; 520400, 3799600; 520000, 3799600; 520000, 3799500; 520100, 3799500; 520100, 3799400; 520200, 3799400; 520200, 3799300; 520300, 3799300; 520300, 3799400; 520600, 3799400; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520100, 3799200; 520100, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798700; 521500, 3798700; 521500, 3798800; 521400, 3798800; 521400, 3799000; 521300, 3799000; 521300, 3799100; 521200, 3799100; 521200, 3799200; 521500, 3799200; 521500, 3799300; 521800, 3799300; 521800, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3797900; 521100, 3797900; 521100, 3798000; 521000, 3798000; 521000, 3797900; 520900, 3797900; 520900, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798000; 520300, 3798000; 520300, 3798300; 520200, 3798300; 520200, 3798200; 519900, 3798200; 519900, 3798300; 519800, 3798300; 519800, 3798400; 519700, 3798400; 519700, 3799000; 519800, 3799000; 519800, 3799100; 519700, 3799100; 519700, 3799600; 519900, 3799600; 519900, 3799900; 520100, 3799900; and 520100, 3800000.

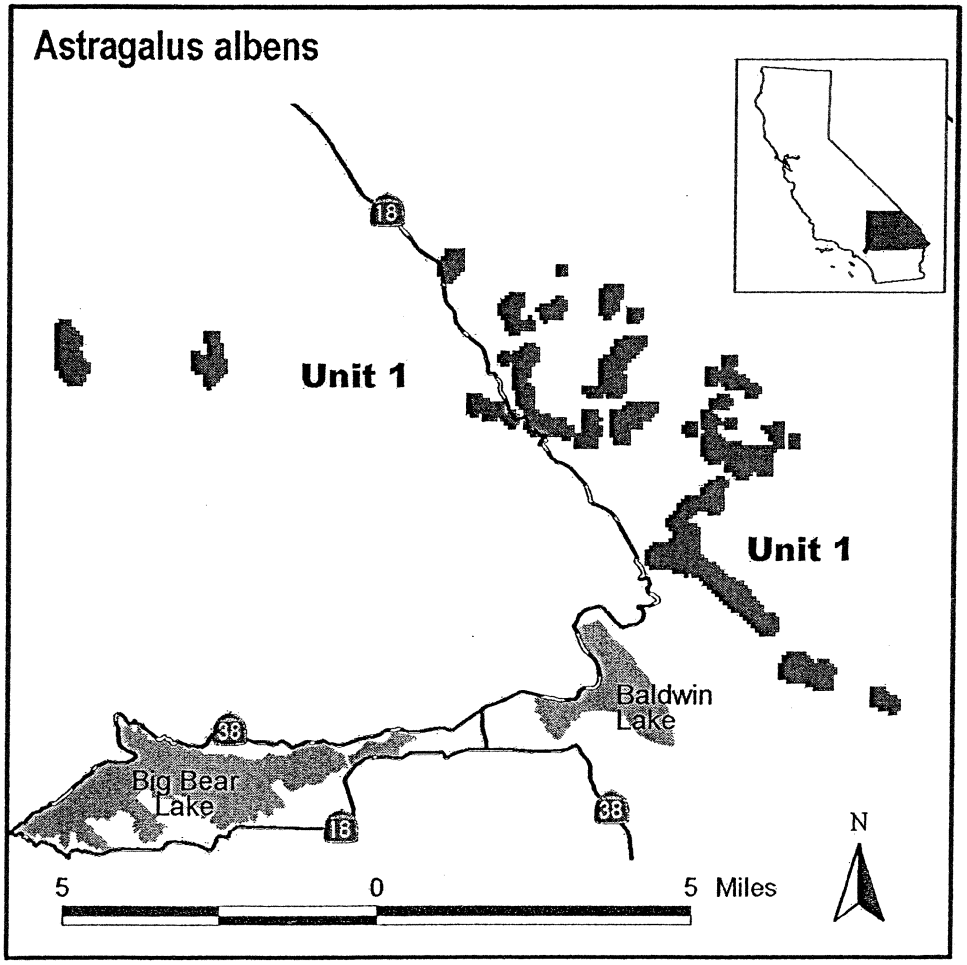
Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3799000; 522200, 3799000; 522200, 3798600; 521900, 3798600; and 521900, 3799000.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3797900; 520300, 3797900; 520300, 3797800; 520400, 3797800; 520400, 3797600; 520300, 3797600; 520300, 3797000; 520200, 3797000; 520200, 3796900; 519900, 3796900; 519900, 3797000; 519600, 3797000; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796700; 519600, 3796700; 519600, 3796600; 519700, 3796600; 519700, 3795900; 519800, 3795900; 519800, 3795800; 519900, 3795800; 519900, 3795700; 520100, 3795700; 520100, 3795600; 520200, 3795600; 520200, 3795500; 520300, 3795500; 520300, 3795400; 520400, 3795400; 520400, 3795300; 520600, 3795300; 520600, 3795200; 520800, 3795200; 520800, 3795100; 520900, 3795100; 520900, 3795000; 521000, 3795000; 521000, 3794800; 521100, 3794800; 521100, 3794700; 521200, 3794700; 521200, 3794600; 521300, 3794600; 521300, 3794400; 521600, 3794400; 521600, 3794300; 521700, 3794300; 521700, 3793900; 521600, 3793900; 521600, 3793800; 521200, 3793800; 521200, 3793900; 521100, 3793900; 521100, 3794000; 521000, 3794000; 521000, 3794100; 520900, 3794100; 520900, 3794200; 520800, 3794200; 520800, 3794300; 520700, 3794300; 520700, 3794400; 520500, 3794400; 520500, 3794500; 520400, 3794500; 520400, 3794600; 520300, 3794600; 520300, 3794700; 520200, 3794700; 520200, 3794800; 520100, 3794800; 520100, 3794900; 520000, 3794900; 520000, 3795000; 519900, 3795000; 519900, 3795100; 519800, 3795100; 519800, 3795200; 519700, 3795200; 519700, 3795300; 519500, 3795300; 519500, 3795400; 519400, 3795400; 519400, 3795300; 519300, 3795300; 519300, 3795400; 519000, 3795400; 519000, 3795500; 518400, 3795500; 518400, 3795600; 518300, 3795600; 518300, 3796000; 518400, 3796000; 518400, 3796100; 518500, 3796100; 518500, 3796200; 518900, 3796200; 518900, 3796300; 519000, 3796300; 519000, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3796900; 519000, 3796900; 519000, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; 519200, 3797300; 519300, 3797300; 519300, 3797400; 519700, 3797400; 519700, 3797600; 519800, 3797600; 519800, 3797700; 519900, 3797700; 519900, 3797800; 520100, 3797800; and 520100, 3797900.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3793400; 522400, 3793400; 522400, 3793300; 522500, 3793300; 522500, 3793200; 522600, 3793200; 522600, 3793100; 522700, 3793100; 522700, 3793200; 523000, 3793200; 523000, 3793100; 523100, 3793100; 523100, 3793000; 523200, 3793000; 523200, 3792800; 523100, 3792800; 523100, 3792400; 522600, 3792400; 522600, 3792500; 522400, 3792500; 522400, 3792600; 521900, 3792600; 521900, 3792700; 521700, 3792700; 521700, 3793100; 521800, 3793100; 521800, 3793300; 521900, 3793300; and 521900, 3793400.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524500, 3792500; 524500, 3792400; 524600, 3792400; 524600, 3792300; 524800, 3792300; 524800, 3792200; 524900, 3792200; 524900, 3791900; 524800, 3791900; 524800, 3791800; 524600, 3791800; 524600, 3791900; 524300, 3791900; 524300, 3792000; 524100, 3792000; and 524100, 3792500.

(2) *Astragalus albens* Map follows.



Family Polygonaceae: *Eriogonum ovalifolium* var. *vineum* (Cushenbury Buckwheat)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Eriogonum ovalifolium* var. *vineum* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, Butler Peak, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 497000, 3803000; 497200, 3803000; 497200, 3802900; 497300, 3802900; 497300, 3802500; 497000, 3802500; 497000, 3802600; 496900, 3802600; 496900, 3802900; 497000, 3802900; and 497000, 3803000.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 498000, 3800800; 498600, 3800800; 498600, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; and 498000, 3800800.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 503400, 3801200; 503700, 3801200; 503700, 3801100; 503900, 3801100; 503900, 3800800; 504000, 3800800; 504000, 3800400; 503900, 3800400; 503900, 3800300; 503700, 3800300; 503700, 3800400; 503400, 3800400; 503400, 3800600; 503300, 3800600; 503300, 3800700; 503200, 3800700; 503200, 3801000; 503300, 3801000; 503300, 3801100; 503400, 3801100; and 503400, 3801200.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 505200, 3800400; 505500, 3800400; 505500, 3800300; 506000, 3800300; 506000, 3800200; 506100, 3800200; 506100, 3799900; 506000, 3799900; 506000, 3800000; 505700, 3800000; 505700, 3799900; 505600, 3799900; 505600, 3799600; 505200,

3799600; 505200, 3800100; 505100, 3800100; 505100, 3800300; 505200, 3800300; and 505200, 3800400.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3799900; 507000, 3799900; 507000, 3799800; 507100, 3799800; 507100, 3799600; 506900, 3799600; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798700; 507300, 3798700; 507300, 3798600; 506800, 3798600; 506800, 3798800; 506200, 3798800; 506200, 3799200; 506500, 3799200; 506500, 3799300; 506600, 3799300; 506600, 3799500; 506700, 3799500; 506700, 3799800; 506800, 3799800; and 506800, 3799900.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507000, 3798100; 507000, 3798000; 507500, 3798000; 507500, 3797700; 507600, 3797700; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506800, 3797300; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3798200; 508300, 3798200; 508300, 3798100; 508400, 3798100; 508400, 3797900; 508300, 3797900; 508300, 3797800; 508000, 3797800; 508000, 3798100; 508100, 3798100; and 508100, 3798200.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 507900, 3797600; 508400, 3797600; 508400, 3797200; 508300, 3797200; 508300, 3797100; 508200, 3797100; 508200, 3796800; 507800, 3796800; 507800, 3797100; 507700, 3797100; 507700, 3797500; 507900, 3797500; and 507900, 3797600.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 508400, 3797200; 508700, 3797200; 508700, 3796900; 508400, 3796900; and 508400, 3797200.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3800600; 508600, 3800600; 508600, 3800500; 508700, 3800500; 508700, 3800200; 508600, 3800200; 508600, 3800100; 508100, 3800100; 508100, 3800500; 508300, 3800500; and 508300, 3800600.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3799800; 508500, 3799800; 508500, 3799400; 508400, 3799400; 508400, 3799300; 508200, 3799300; 508200, 3799400; 508000, 3799400; 508000, 3799700; 508100, 3799700; and 508100, 3799800.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 508700, 3799400; 509200, 3799400; 509200, 3799100; 509100, 3799100; 509100, 3798900; 508700, 3798900; and 508700, 3799400.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 509400, 3800700; 509700, 3800700; 509700, 3800600; 509800, 3800600; 509800, 3800500; 510300, 3800500; 510300, 3800400; 510400, 3800400; 510400, 3800300; 510600, 3800300; 510600, 3800100; 510200, 3800100; 510200, 3800300; 510100, 3800300; 510100, 3800400; 509900, 3800400; 509900, 3800200; 509500, 3800200; 509500, 3800100; 509200, 3800100; 509200, 3800300; 509100, 3800300; 509100, 3800500; 509200, 3800500; 509200, 3800600; 509400, 3800600; and 509400, 3800700.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 510500, 3801200; 510700, 3801200; 510700, 3800900; 510500, 3800900; 510500, 3800800; 510400, 3800800; 510400, 3800700; 510600, 3800700; 510600, 3800600; 510300, 3800600; 510300, 3800700; 510200, 3800700; 510200, 3800800; 510300, 3800800; 510300, 3801000; 510400, 3801000; 510400, 3801100; 510500, 3801100; and 510500, 3801200.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3800700; 511300, 3800700; 511300, 3800500; 510900, 3800500; and 510900, 3800700.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 511900, 3801000; 512200, 3801000; 512200, 3800800; 512300, 3800800; 512300, 3800700; 512500, 3800700; 512500, 3800600; 512700, 3800600; 512700, 3800800; 513000, 3800800; 513000, 3800300; 512900, 3800300; 512900, 3800100; 512800, 3800100; 512800, 3799900; 512900, 3799900; 512900, 3799800; 513000, 3799800; 513000, 3799700; 513100, 3799700; 513100, 3799500; 513000, 3799500; 513000, 3799400; 512700, 3799400; 512700, 3799500; 512500, 3799500; 512500, 3799600; 512300, 3799600; 512300, 3799700; 512200, 3799700; 512200, 3799800; 512100, 3799800; 512100, 3799600; 512200, 3799600; 512200, 3799500; 512300, 3799500; 512300, 3799200; 511800, 3799200; 511800, 3799500; 511700, 3799500; 511700, 3799400; 511400, 3799400; 511400, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799700; 511100, 3799700; 511100, 3799800; 511000, 3799800; 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511700, 3799900; 511700, 3799800; 511800, 3799800; 511800, 3799900; 512000, 3799900; 512000, 3800100; 511900, 3800100; 511900, 3800500; 512000, 3800500; 512000, 3800700; 511900, 3800700; and 511900, 3801000.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 513200, 3800300; 513500, 3800300; 513500, 3800200; 513900, 3800200; 513900, 3800100; 514000, 3800100; 514000, 3800000; 514100, 3800000; 514100, 3799900; 514200, 3799900; 514200, 3800000; 514600, 3800000; 514600, 3799800; 514500, 3799800; 514500, 3799300; 514100, 3799300; 514100, 3799600; 514000, 3799600; 514000, 3799400; 513700, 3799400; 513700, 3799500; 513500, 3799500; 513500, 3799400; 513600, 3799400; 513600, 3799300; 513900, 3799300; 513900, 3799200; 514000, 3799200; 514000, 3798900; 513600, 3798900; 513600, 3798800; 513500, 3798800; 513500, 3798700; 513300, 3798700; 513300, 3798800; 513200, 3798800; 513200, 3799000; 513100, 3799000; 513100, 3799500; 513200, 3799500; 513200, 3799800; 513400, 3799800; 513400, 3799900; 513100, 3799900; 513100, 3800200; 513200, 3800200; and 513200, 3800300.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514500, 3800800; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3802100; 515900, 3802100; 515900, 3801900; 516000, 3801900; 516000, 3801800; 516100, 3801800; 516100, 3801600; 516000, 3801600; 516000, 3801500; 516500, 3801500; 516500, 3801200; 516400, 3801200; 516400, 3801100; 516200, 3801100; 516200, 3800900; 516100, 3800900; 516100, 3800800; 516000, 3800800; 516000, 3800700; 515800, 3800700; 515800, 3800600; 516200, 3800600; 516200, 3800700; 516500, 3800700; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3799900; 515800, 3799900; 515800, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; 515300, 3799800; 515000, 3799800; 515000, 3799900; 514900, 3799900; 514900, 3800100; 515000, 3800100; 515000, 3800200; 515300, 3800200; 515300, 3800100; 515400, 3800100; 515400, 3800200; 515500, 3800200; 515500, 3800300; 515600, 3800300; 515600, 3800200; 515800, 3800200; 515800, 3800300; 515700, 3800300; 515700, 3800600; 515600,

3800600; 515600, 3800800; 515100, 3800800; 515100, 3800700; 515200, 3800700; 515200, 3800400; 515100, 3800400; 515100, 3800300; 514700, 3800300; 514700, 3800400; 514600, 3800400; 514600, 3800800; 514500, 3800800; 514500, 3800900; 514400, 3800900; 514400, 3801100; 514500, 3801100; 514500, 3801200; 514600, 3801200; 514600, 3801300; 514800, 3801300; 514800, 3801400; 515200, 3801400; 515200, 3801300; 515700, 3801300; 515700, 3801500; 515600, 3801500; 515600, 3801600; 515500, 3801600; 515500, 3801700; 515400, 3801700; 515400, 3802000; 515500, 3802000; and 515500, 3802100.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514700, 3799400; 514700, 3799500; 514800, 3799500; and 514800, 3799600.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3799700; 516900, 3799700; 516900, 3799600; 517100, 3799600; 517100, 3799500; 517200, 3799500; 517200, 3799000; 517300, 3799000; 517300, 3798700; 516800, 3798700; 516800, 3798600; 516400, 3798600; 516400, 3798700; 516300, 3798700; 516300, 3798600; 516100, 3798600; 516100, 3798700; 516000, 3798700; 516000, 3798800; 515900, 3798800; 515900, 3798900; 515700, 3798900; 515700, 3799000; 515400, 3799000; 515400, 3799100; 515300, 3799100; 515300, 3799500; 516000, 3799500; 516000, 3799400; 516300, 3799400; 516300, 3799300; 516400, 3799300; 516400, 3799600; 516700, 3799600; and 516700, 3799700.

Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3800500; 517100, 3800500; 517100, 3800300; 517200, 3800300; 517200, 3800000; 517100, 3800000; 517100, 3799900; 516700, 3799900; 516700, 3800000; 516600, 3800000; 516600, 3800400; 516700, 3800400; and 516700, 3800500.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 518600, 3799900; 519100, 3799900; 519100, 3799600; 519000, 3799600; 519000, 3799500; 518700, 3799500; 518700, 3799400; 518500, 3799400; 518500, 3799200; 518400, 3799200; 518400, 3799100; 518300, 3799100; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798900; 517800, 3798900; 517800, 3798800; 517600, 3798800; 517600, 3798900; 517500, 3798900; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517300, 3799300; 517300, 3799700; 517500, 3799700; 517500, 3799800; 518100, 3799800; 518100, 3799700; 518400, 3799700; 518400, 3799800; 518600, 3799800; and 518600, 3799900.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 515400, 3797400; 515800, 3797400; 515800, 3797300; 516300, 3797300; 516300, 3797200; 516400, 3797200; 516400, 3796900; 515500, 3796900; 515500, 3797000; 515400, 3797000; and 515400, 3797400.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 519100, 3797200; 519400, 3797200; 519400, 3797100; 519500, 3797100; 519500, 3796900; 519700, 3796900; 519700, 3796000; 519600, 3796000; 519600, 3795900; 519500, 3795900; 519500, 3795700; 519100, 3795700; 519100, 3796100; 519000, 3796100; 519000, 3796300; 518900, 3796300; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3797000; 519000, 3797000; 519000, 3797100; 519100, 3797100; and 519100, 3797200.

Subunit 1z: land bounded by the following UTM11 NAD27 coordinates (E, N): 519600, 3797600; 519800, 3797600; 519800, 3797500; 520300, 3797500; 520300, 3797100; 520200, 3797100; 520200, 3797000; 519800, 3797000; 519800, 3797100; 519700, 3797100; 519700, 3797200; 519500, 3797200; 519500, 3797500; 519600, 3797500; and 519600, 3797600.

Subunit 1aa: land bounded by the following UTM11 NAD27 coordinates (E, N): 519700, 3800600; 520200, 3800600; 520200, 3800200; 520100, 3800200; 520100, 3800100; 519700, 3800100; and 519700, 3800600.

Subunit 1ab: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3800000; 520700, 3800000; 520700, 3799900; 520800, 3799900; 520800, 3799500; 520400, 3799500; 520400, 3799600; 519900, 3799600; 519900, 3799900; 520000, 3799900; and 520000, 3800000.

Subunit 1ac: land bounded by the following UTM11 NAD27 coordinates (E, N): 521000, 3800000; 521500, 3800000; 521500, 3799700; 521400, 3799700; 521400, 3799500; 520900, 3799500; 520900, 3799800; 521000, 3799800; and 521000, 3800000.

Subunit 1ad: land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3799400; 520500, 3799400; 520500, 3799300; 520600, 3799300; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520200, 3799200; 520200, 3799100; 520000, 3799100; 520000, 3799000; 520200, 3799000; 520200, 3798800; 520100, 3798800; 520100, 3798700; 519700, 3798700; 519700, 3799100; 519900, 3799100; 519900, 3799300; 520000, 3799300; and 520000, 3799400.

Subunit 1ae: land bounded by the following UTM11 NAD27 coordinates (E, N): 521400, 3799000; 522000, 3799000; 522000, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3798400; 521300, 3798400; 521300, 3798300; 521200, 3798300; 521200, 3798200; 520900, 3798200; 520900, 3798300; 520700, 3798300; 520700, 3798000; 520300, 3798000; 520300, 3798300; 520400, 3798300; 520400, 3798400; 520600, 3798400; 520600, 3798500; 520400, 3798500; 520400, 3798700; 520500, 3798700; 520500, 3798800; 520700, 3798800; 520700, 3798700; 520800, 3798700; 520800, 3798800; 521100, 3798800; 521100, 3798700; 521400, 3798700; 521400, 3798800; 521300, 3798800; 521300, 3798900; 521400, 3798900; and 521400, 3799000.

Subunit 1af: land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794600; 520100, 3794600; 520100, 3794200; 519800, 3794200; and 519800, 3794600.

Subunit 1ag: land bounded by the following UTM11 NAD27 coordinates (E, N): 520400, 3794200; 521100, 3794200; 521100, 3793900; 521000, 3793900; 521000, 3793800; 520700, 3793800; 520700, 3793700; 520400, 3793700; 520400, 3793800; 520300, 3793800; 520300, 3793700; 520000, 3793700; 520000, 3793800; 519900, 3793800; 519900, 3794000; 520000, 3794000; 520000, 3794100; 520400, 3794100; and 520400, 3794200.

Subunit 1ah: land bounded by the following UTM11 NAD27 coordinates (E, N): 521600, 3794700; 521800, 3794700; 521800, 3794600; 521900, 3794600; 521900, 3794300; 521800, 3794300; 521800, 3794200; 521400, 3794200; 521400, 3794500; 521500, 3794500; 521500, 3794600; 521600, 3794600; and 521600, 3794700.

Subunit 1ai: land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3793300; 521700, 3793300; 521700, 3793200; 521800, 3793200; 521800, 3793000; 521900, 3793000; 521900, 3793100; 522400, 3793100; 522400, 3793000; 522600, 3793000; 522600, 3792900; 522800, 3792900; 522800, 3792800; 523000, 3792800; 523000, 3792500; 523100, 3792500; 523100, 3792400; 523400, 3792400; 523400, 3792300; 523500, 3792300; 523500, 3791900; 523400, 3791900; 523400, 3791800; 523200, 3791800; 523200, 3791900; 523100, 3791900; 523100, 3792000; 522800,

3792000; 522800, 3792100; 522700, 3792100; 522700, 3792200; 522400, 3792200; 522400, 3792300; 522200, 3792300; 522200, 3792400; 522000, 3792400; 522000, 3792600; 521900, 3792600; 521900, 3792500; 521800, 3792500; 521800, 3792600; 521700, 3792600; 521700, 3792700; 521400, 3792700; 521400, 3792900; 521200, 3792900; 521200, 3793200; 521300, 3793200; and 521300, 3793300.

Subunit 1aj: land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524300, 3792500; 524300, 3792400; 524500, 3792400; 524500, 3792300; 524700, 3792300; 524700, 3792200; 524800, 3792200; 524800, 3792100; 524900, 3792100; 524900, 3792200; 525300, 3792200; 525300, 3792100; 525400, 3792100; 525400, 3791800; 525300, 3791800; 525300, 3791600; 525500, 3791600; 525500, 3791500; 525600, 3791500; 525600, 3791300; 525700, 3791300; 525700, 3791200; 525800, 3791200; 525800, 3791500; 526200, 3791500; 526200, 3791300; 526300, 3791300; 526300, 3791200; 526500, 3791200; 526500, 3791100; 526700, 3791100; 526700, 3791000; 526800, 3791000; 526800, 3791100; 527100, 3791100; 527100, 3791000; 527200, 3791000; 527200, 3790900; 527400, 3790900; 527400, 3790600; 527500, 3790600; 527500, 3790100; 527000, 3790100; 527000, 3790200; 526900, 3790200; 526900, 3790400; 526600, 3790400; 526600, 3790500; 526500, 3790500; 526500, 3790200; 526400, 3790200; 526400, 3790100; 526300, 3790100; 526300, 3790000; 526000, 3790000; 526000, 3790500; 525700, 3790500; 525700, 3790400; 525600, 3790400; 525600, 3790500; 525500, 3790500; 525500, 3790600; 525400, 3790600; 525400, 3790700; 525300, 3790700; 525300, 3791000; 525100, 3791000; 525100, 3791200; 524800, 3791200; 524800, 3791300; 524700, 3791300; 524700, 3791200; 524300, 3791200; 524300, 3791300; 524200, 3791300; 524200, 3791400; 524000, 3791400; 524000, 3791500; 523800, 3791500; 523800, 3791900; 524200, 3791900; 524200, 3792100; 524000, 3792100; 524000, 3792400; 524100, 3792400; and 524100, 3792500; excluding land bounded by 525900, 3791100; 525900, 3790900; 526000, 3790900; 526000, 3791100; and 525900, 3791100.

Subunit 1ak: land bounded by the following UTM11 NAD27 coordinates (E, N): 527600, 3790400; 527900, 3790400; 527900, 3790300; 528000, 3790300; 528000, 3790100; 527900, 3790100; 527900, 3790000; 527600, 3790000; and 527600, 3790400.

Subunit 1al: land bounded by the following UTM11 NAD27 coordinates (E, N): 527900, 3789600; 528200, 3789600; 528200, 3789300; 527800, 3789300; 527800, 3789500; 527900, 3789500; and 527900, 3789600.

Subunit 1am: land bounded by the following UTM11 NAD27 coordinates (E, N): 526900, 3789400; 527100, 3789400; 527100, 3789300; 527200, 3789300; 527200, 3789100; 527400, 3789100; 527400, 3789200; 527700, 3789200; 527700, 3789100; 527800, 3789100; 527800, 3789000; 528000, 3789000; 528000, 3789100; 528400, 3789100; 528400, 3789000; 528500, 3789000; 528500, 3788900; 528600, 3788900; 528600, 3788700; 528700, 3788700; 528700, 3788600; 528800, 3788600; 528800, 3788400; 528900, 3788400; 528900, 3788300; 529000, 3788300; 529000, 3788100; 528900, 3788100; 528900, 3788000; 528700, 3788000; 528700, 3788100; 528100, 3788100; 528100, 3788300; 527900, 3788300; 527900, 3788400; 527800, 3788400; 527800, 3788500; 527700, 3788500; 527700, 3788600; 527600, 3788600; 527600, 3788500; 527200, 3788500; 527200, 3788700; 527100, 3788700; 527100, 3788600; 526800, 3788600; 526800, 3788700; 526600, 3788700; 526600, 3788900; 526700, 3788900; 526700, 3789000; 526900, 3789000; and 526900, 3789400.

Subunit 1an: land bounded by the following UTM11 NAD27 coordinates (E, N): 529200, 3788100; 529500, 3788100; 529500, 3787700; 529400, 3787700; 529400, 3787600; 529100, 3787600; 529100, 3788000; 529200, 3788000; and 529200, 3788100.

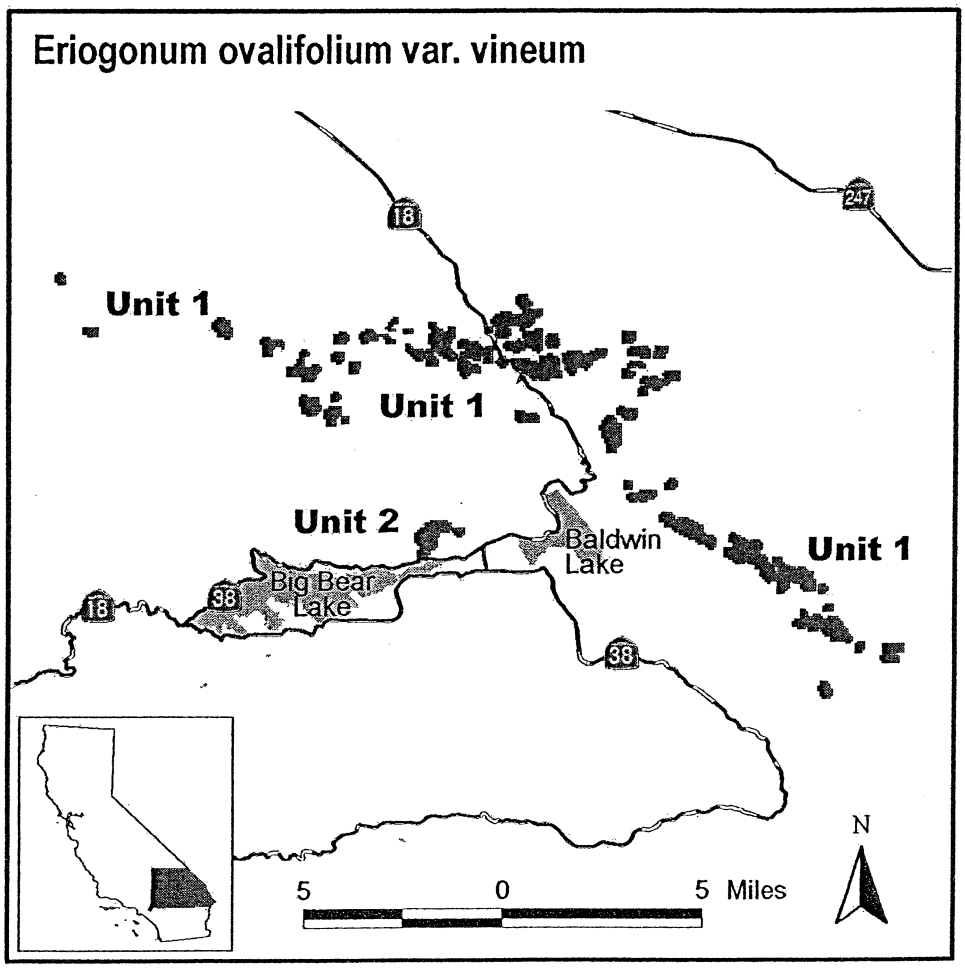
Subunit 1ao: land bounded by the following UTM11 NAD27 coordinates (E, N): 530200, 3788000; 531100, 3788000; 531100, 3787600; 530800, 3787600; 530800, 3787500; 530900, 3787500; 530900, 3787200; 530200, 3787200; 530200, 3787300; 530100, 3787300; 530100, 3787500; 530200, 3787500; and 530200, 3788000.

Subunit 1ap: land bounded by the following UTM11 NAD27 coordinates (E, N): 527700, 3786500; 528000, 3786500; 528000, 3786400; 528100, 3786400; 528100, 3786200; 528200, 3786200; 528200, 3785900; 528100, 3785900; 528100, 3785800; 527800, 3785800; 527800, 3785900; 527700, 3785900; 527700, 3786100; 527600, 3786100; 527600, 3786300; 527700, 3786300; and 527700, 3786500.

(D) Bertha Ridge Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California, land bounded by the following UTM11 NAD27 coordinates (E, N): 512000, 3793000; 512700, 3793000; 512700, 3792900; 512900, 3792900; 512900, 3792700; 513400, 3792700; 513400, 3792400; 513300, 3792400; 513300, 3792300; 513100, 3792300; 513100, 3792400; 513000, 3792400; 513000, 3792500; 512900, 3792500; 512900, 3792600; 512800, 3792600; 512800, 3792500; 512400, 3792500; 512400, 3792300; 512300, 3792300; 512300, 3791900; 512200, 3791900; 512200, 3791800; 512000, 3791800; 512000, 3791600; 511900, 3791600; 511900, 3791400; 511500, 3791400; 511500, 3791800; 511600, 3791800; 511600, 3792000; 511500, 3792000; 511500, 3792100; 511400, 3792100; 511400, 3792500; 511500, 3792500; 511500, 3792600; 511600, 3792600; 511600, 3792700; 511800, 3792700; 511800, 3792900; 512000, 3792900; and 512000, 3793000.

(2) *Eriogonum ovalifolium* var. *vineum* Map follows.



Family Polygonaceae: *Oxytheca parishii* var. *goodmaniana* (Cushenbury Oxytheca)

(A) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(B) The primary constituent elements of critical habitat for *Oxytheca parishii* var. *goodmaniana* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(*1*) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(*2*) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.,* graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(*3*) Associated plant communities that have areas with an moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

(C) Critical habitat does not include existing features and structures, such as buildings, mines that are active at the time of this rule's publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(D) Northeastern Slope Unit, San Bernardino County, California.

(*1*) From USGS 1:24,000 quadrangle maps Butler Peak, Fawnskin, Big Bear City, Rattlesnake Canyon, and Onyx Peak, California.

Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 498200, 3801600; 498500, 3801600; 498500, 3801500; 498600, 3801500; 498600, 3801200; 498300, 3801200; 498300, 3801300; 498200, 3801300; and 498200, 3801600.

Subunit 1b: land bounded by the following UTM11 NAD27 coordinates (E, N): 498800, 3801200; 499400, 3801200; 499400, 3800900; 499500, 3800900; 499500, 3800800; 499600, 3800800; 499600, 3800600; 499500, 3800600; 499500, 3800500; 499400, 3800500; 499400, 3800400; 499100, 3800400; 499100, 3800300; 499000, 3800300; 499000, 3800000; 498900, 3800000; 498900, 3799900; 498700, 3799900; 498700, 3799600; 498300, 3799600; 498300, 3800000; 498400, 3800000; 498400, 3800100; 498600, 3800100; 498600, 3800300; 498500, 3800300; 498500, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; 498000, 3800800; 498400, 3800800; 498400, 3800900; 498700, 3800900; 498700, 3801100; 498800, 3801100; and 498800, 3801200.

Subunit 1c: land bounded by the following UTM11 NAD27 coordinates (E, N): 500200, 3799900; 500600, 3799900; 500600, 3799800; 500700, 3799800; 500700, 3799600; 500600,

3799600; 500600, 3799500; 500300, 3799500; 500300, 3799600; 500200, 3799600; and 500200, 3799900.

Subunit 1d: land bounded by the following UTM11 NAD27 coordinates (E, N): 502800, 3797400; 503400, 3797400; 503400, 3797200; 503500, 3797200; 503500, 3797000; 503400, 3797000; 503400, 3796900; 502900, 3796900; 502900, 3797000; 502800, 3797000; and 502800, 3797400.

Subunit 1e: land bounded by the following UTM11 NAD27 coordinates (E, N): 503600, 3799300; 504000, 3799300; 504000, 3798600; 504300, 3798600; 504300, 3798500; 504400, 3798500; 504400, 3798400; 505300, 3798400; 505300, 3798300; 505500, 3798300; 505500, 3798000; 505300, 3798000; 505300, 3797700; 505100, 3797700; 505100, 3797800; 505000, 3797800; 505000, 3798000; 504500, 3798000; 504500, 3797900; 504300, 3797900; 504300, 3798000; 504000, 3798000; 504000, 3798100; 503900, 3798100; 503900, 3798300; 503800, 3798300; 503800, 3798100; 503500, 3798100; 503500, 3798000; 503100, 3798000; 503100, 3798400; 503200, 3798400; 503200, 3798500; 503700, 3798500; 503700, 3798600; 503600, 3798600; and 503600, 3799300.

Subunit 1f: land bounded by the following UTM11 NAD27 coordinates (E, N): 506700, 3799500; 506900, 3799500; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798800; 506900, 3798800; 506900, 3798900; 506700, 3798900; 506700, 3798800; 506000, 3798800; 506000, 3799200; 506600, 3799200; 506600, 3799400; 506700, 3799400; and 506700, 3799500.

Subunit 1g: land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507300, 3798100; 507300, 3797800; 507400, 3797800; 507400, 3797700; 507600, 3797700; 507600, 3797600; 507900, 3797600; 507900, 3797500; 508000, 3797500; 508000, 3797400; 508100, 3797400; 508100, 3797200; 508200, 3797200; 508200, 3797000; 508300, 3797000; 508300, 3796700; 508400, 3796700; 508400, 3796600; 508500, 3796600; 508500, 3796200; 508200, 3796200; 508200, 3796100; 507700, 3796100; 507700, 3796500; 507800, 3796500; 507800, 3796600; 507900, 3796600; 507900, 3796700; 507800, 3796700; 507800, 3796800; 507700, 3796800; 507700, 3797000; 507600, 3797000; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506900, 3797300; 506900, 3797400; 506800, 3797400; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

Subunit 1h: land bounded by the following UTM11 NAD27 coordinates (E, N): 508800, 3799300; 509000, 3799300; 509000, 3799200; 509100, 3799200; 509100, 3798800; 509000, 3798800; 509000, 3798700; 508800, 3798700; 508800, 3798800; 508700, 3798800; 508700, 3799100; 508800, 3799100; and 508800, 3799300.

Subunit 1i: land bounded by the following UTM11 NAD27 coordinates (E, N): 509300, 3801000; 509600, 3801000; 509600, 3800800; 509700, 3800800; 509700, 3800700; 509800, 3800700; 509800, 3800500; 510100, 3800500; 510100, 3800400; 510300, 3800400; 510300, 3800300; 510500, 3800300; 510500, 3800000; 509900, 3800000; 509900, 3800100; 509500, 3800100; 509500, 3800400; 509600, 3800400; 509600, 3800500; 509500, 3800500; 509500, 3800600; 509400, 3800600; 509400, 3800800; 509300, 3800800; and 509300, 3801000.

Subunit 1j: land bounded by the following UTM11 NAD27 coordinates (E, N): 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511500, 3799900; 511500, 3799800; 511600, 3799800; 511600, 3799600; 511500, 3799600; 511500, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799800; 511100, 3799800; 511100, 3799900; 511000, 3799900; and 511000, 3800100.

Subunit 1k: land bounded by the following UTM11 NAD27 coordinates (E, N): 512300, 3800600; 512600, 3800600; 512600, 3800500; 512700, 3800500; 512700, 3800100; 512600, 3800100; 512600, 3799900; 512700, 3799900; 512700, 3799600; 512300, 3799600; 512300, 3799700; 512100, 3799700; 512100, 3799600; 511700, 3799600; 511700, 3799800; 511900, 3799800; 511900, 3799900; 512000, 3799900; 512000, 3799800; 512100, 3799800; 512100, 3800000; 511900, 3800000; 511900, 3800100; 511800, 3800100; 511800, 3800500; 512300, 3800500; and 512300, 3800600.

Subunit 1l: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3799300; 513600, 3799300; 513600, 3799200; 513700, 3799200; 513700, 3798900; 513600, 3798900; 513600, 3798800; 513400, 3798800; 513400, 3798900; 513200, 3798900; 513200, 3799200; 513300, 3799200; and 513300, 3799300.

Subunit 1m: land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3800400; 513500, 3800400; 513500, 3800200; 513700, 3800200; 513700, 3800100; 513800, 3800100; 513800, 3800000; 514000, 3800000; 514000, 3799900; 514100, 3799900; 514100, 3799700; 513800, 3799700; 513800, 3799800; 513700, 3799800; 513700, 3799900; 513300, 3799900; 513300, 3800000; 513200, 3800000; 513200, 3800300; 513300, 3800300; and 513300, 3800400.

Subunit 1n: land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514400, 3800800; 514400, 3800700; 514500, 3800700; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

Subunit 1o: land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3801300; 515000, 3801300; 515000, 3801200; 515100, 3801200; 515100, 3801000; 515000, 3801000; 515000, 3800900; 514700, 3800900; 514700, 3801200; 514800, 3801200; and 514800, 3801300.

Subunit 1p: land bounded by the following UTM11 NAD27 coordinates (E, N): 514600, 3799700; 514900, 3799700; 514900, 3799400; 514600, 3799400; and 514600, 3799700.

Subunit 1q: land bounded by the following UTM11 NAD27 coordinates (E, N): 515900, 3802200; 516200, 3802200; 516200, 3801900; 516100, 3801900; 516100, 3801800; 515900, 3801800; 515900, 3801900; 515800, 3801900; 515800, 3802100; 515900, 3802100; and 515900, 3802200.

Subunit 1r: land bounded by the following UTM11 NAD27 coordinates (E, N): 516100, 3801400; 516400, 3801400; 516400, 3801000; 516100, 3801000; 516100, 3801100; 516000, 3801100; 516000, 3801300; 516100, 3801300; and 516100, 3801400.

Subunit 1s: land bounded by the following UTM11 NAD27 coordinates (E, N): 515300, 3800400; 515600, 3800400; 515600, 3800300; 515700, 3800300; 515700, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; and 515300, 3800400.

Subunit 1t: land bounded by the following UTM11 NAD27 coordinates (E, N): 515700, 3800600; 516100, 3800600; 516100, 3800500; 516400, 3800500; 516400, 3800400; 516500, 3800400; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3800000; 516000, 3800000; 516000, 3800100; 515800, 3800100; 515800, 3800300; 515700, 3800300; and 515700, 3800600.

Subunit 1u: land bounded by the following UTM11 NAD27 coordinates (E, N): 516800, 3800400; 517100, 3800400; 517100, 3800300; 517200, 3800300; 517200, 3800000; 516800, 3800000; and 516800, 3800400.

Subunit 1v: land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3799600; 515900, 3799600; 515900, 3799500; 516000, 3799500; 516000, 3799400; 516400, 3799400; 516400, 3799300; 516500, 3799300; 516500, 3799100; 516700, 3799100; 516700, 3799200; 516600, 3799200; 516600, 3799400; 516700, 3799400; 516700, 3799500; 517000, 3799500; 517000, 3799300; 517100, 3799300; 517100, 3799100; 517200, 3799100; 517200, 3798700; 516500, 3798700; 516500, 3798800; 516300, 3798800; 516300, 3798900; 516200, 3798900; 516200, 3799000; 516100, 3799000; 516100, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3798900; 515400, 3798900; 515400, 3799000; 515300, 3799000; 515300, 3799300; 515400, 3799300; 515400, 3799500; 515500, 3799500; and 515500, 3799600.

Subunit 1w: land bounded by the following UTM11 NAD27 coordinates (E, N): 517500, 3799800; 518000, 3799800; 518000, 3799700; 518300, 3799700; 518300, 3799800; 518600, 3799800; 518600, 3799700; 518800, 3799700; 518800, 3799400; 518600, 3799400; 518600, 3799300; 518700, 3799300; 518700, 3798900; 518300, 3798900; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798800; 517800, 3798800; 517800, 3798700; 517500, 3798700; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517500, 3799300; and 517500, 3799800.

Subunit 1x: land bounded by the following UTM11 NAD27 coordinates (E, N): 520900, 3798700; 521200, 3798700; 521200, 3798600; 521300, 3798600; 521300, 3798300; 521200, 3798300; 521200, 3798100; 520800, 3798100; 520800, 3798200; 520700, 3798200; 520700, 3798600; 520900, 3798600; and 520900, 3798700.

Subunit 1y: land bounded by the following UTM11 NAD27 coordinates (E, N): 526700, 3791000; 527000, 3791000; 527000, 3790900; 527300, 3790900; 527300, 3790800; 527400, 3790800; 527400, 3790600; 527000, 3790600; 527000, 3790400; 526600, 3790400; 526600, 3790700; 526700, 3790700; and 526700, 3791000.

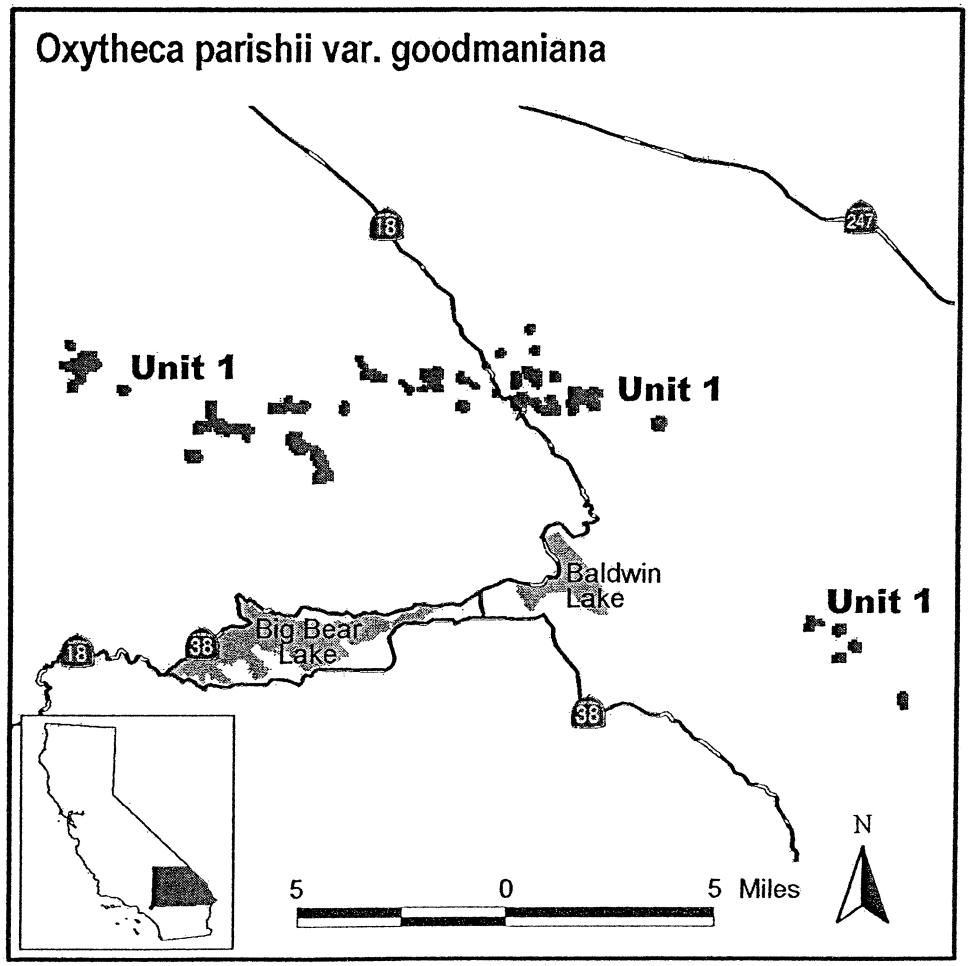
Subunit 1z: land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3790700; 528200, 3790700; 528200, 3790300; 528000, 3790300; 528000, 3790200; 527800, 3790200; 527800, 3790300; 527700, 3790300; 527700, 3790600; 527800, 3790600; and 527800, 3790700.

Subunit 1aa: land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3789600; 528200, 3789600; 528200, 3789200; 527700, 3789200; 527700, 3789500; 527800, 3789500; and 527800, 3789600.

Subunit 1ab: land bounded by the following UTM11 NAD27 coordinates (E, N): 528400, 3790100; 528600, 3790100; 528600, 3790000; 528800, 3790000; 528800, 3789600; 528400, 3789600; 528400, 3789700; 528300, 3789700; 528300, 3790000; 528400, 3790000; and 528400, 3790100.

Subunit 1ac: land bounded by the following UTM11 NAD27 coordinates (E, N): 530300, 3788100; 530500, 3788100; 530500, 3788000; 530600, 3788000; 530600, 3787400; 530300, 3787400; 530300, 3787600; 530200, 3787600; 530200, 3788000; 530300, 3788000; and 530300, 3788100.

(2) *Oxytheca parishii* var. *goodmaniana* Map follows.



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Dated: January 29, 2002.

Joseph E. Doddridge,

Acting Assistanct Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–2761 Filed 2–11–02; 8:45 am]

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February 12, 2002

Part III

Department of Labor

Pension and Welfare Benefits Administration

Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–12; Application No. D–10851]

Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA), the Federal Employees' Retirement System Act (FERSA), and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by investment managers, and among such Funds and certain large accounts which engage such managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. The exemption affects participants and beneficiaries of employee benefit plans whose assets are invested in Index or Model-Driven Funds, large pension plans and other large accounts involved in portfolio restructuring programs, as well as the Funds and their investment managers. This exemption does not address cross-trades of securities among ''actively-managed'' accounts. The Department is considering additional safeguards to protect participants in plans that engage in active cross-trading prior to publishing a proposal to permit such cross-trades.

EFFECTIVE DATE: The effective date of the exemption is April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd or Christopher J. Motta of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 693–8540; or Michael Schloss, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, at (202) 693–5600. (These are not toll-free numbers.)

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520)(PRA 95), the Department submitted the information collection request (ICR) included in the Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of proposed class exemption was published in the **Federal Register** (December 15, 1999, 64 FR 70057). OMB subsequently approved the ICR under OMB control number 1210–0115. The approval will expire on April 30, 2003. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number.

As described in detail in the **SUPPLEMENTARY INFORMATION** section which follows, the Department of Labor (Department) has made certain modifications to the terms of the proposed class exemption in response to comments received from the public. Although the recordkeeping and information disclosure requirements which constitute the information collection provisions of the final class exemption have been clarified in certain respects, the information collection provisions have not been substantively or materially changed from the proposed exemption. The Department has, however, made certain adjustments to its burden estimates and underlying assumptions in response to comments on the proposal. These adjustments relate to the numbers of entities offering Index and Model-Driven Funds and their client plans, and the number of Large Accounts that may make use of the exemption, and the estimated burden of the record-keeping requirement.

The Department's original estimates of the number of users of the exemption were based on the number of individual exemptions granted and applications received, and information received from exemption applicants about the number of plans involved, resulting in estimates of 10 entities with an average of 20 client plans for each. One commenter expressed the view that at least 50 entities with an average of 40 client plans would make use of the exemption. Because the Department acknowledges that the grant of this final exemption may affect the number of entities that would consider implementing a program of cross trading involving index and model funds, the assumed numbers of entities and plans have been increased for purposes of burden estimates to 20 entities and 40 plans, respectively. Similarly, the number of Large Accounts assumed for purposes of estimating burden has been increased from 10 to 40. While the assumed number of Large Accounts is smaller than the 1,000 offered by the commenter, the Department believes that a number approximating 18% of all plans with $50 million in assets would substantially overstate the number likely to make use of the exemption in connection with a portfolio restructuring program in a given year.

The commenter also indicated that the Department's estimates of the time required to establish and maintain the record-keeping systems that would be needed to comply with the exemption were significantly low. The comment states that a significant investment of $4 to $5 million would be required for each user to establish the necessary record-keeping systems, and that substantial amounts of time would be required daily for ongoing record-keeping, and annually for ongoing disclosures. Upon consideration of the comment, the Department has concluded that its original estimates did omit the impact of the initial investment of resources that would be required to enhance existing software and systems to track cross-trades to triggering events. As a result, the Department has revised its estimates to include the hours, or costs as applicable, of 1,040 hours of systems analyst time at $51 per hour (based on Occupational Employment Survey data and 1999 Employment Cost Index, adjusted for non-wage compensation and overhead.) This change adds approximately 12,500 hours and $424,000 to the estimated burden of the final exemption. These totals are distributed over a three year period for purposes of the annual burden shown below.

Given that record-keeping systems for securities transactions are primarily electronic in nature, and that the Department's burden estimates now take into account the start-up cost of modifying automated record-keeping systems, the Department has decided not to revise the estimated time required to maintain the required records of trades and to prepare disclosure materials. In the Department's view, the original estimates are reasonable in light of the degree to which record-keeping is automated, the industry's existing record-keeping practices involving cross-trading, and the information provided by other commenters.

In addition, the final exemption clarifies that the annual disclosures are required to be made with respect to only those Funds that hold plan assets and in which a given plan invests. The commenter had indicated that eliminating the annual disclosure requirement with respect to Funds in which a plan had no investments would substantially reduce the burden. This clarification, therefore, further supports retention of the original assumptions.

Finally, the commenter expressed the view that certain of the information required to be disclosed by the terms of the proposed exemption was duplicative and unnecessary. As noted earlier, with the exception of certain clarifications, the information collection provisions of the final exemption are unchanged from the proposal. The Department's basis for its conclusions with respect to the need for the disclosure and record-keeping provisions of the final exemption are discussed in detail in the **SUPPLEMENTARY INFORMATION** section that follows.

The burden estimates that result from the revised assumptions are presented below:

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Affected Entities: Business or other for-profit.

Respondents: 60 (20 entities and 40 Large Accounts).

Responses: 840.

Annual Hour Burden: $9,100.

Annualized Capital/Start-up Cost: $141,000.

Annual Cost (Operating and Maintenance): $280,000.

Annual Cost Burden: $421,000.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising 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 the Executive Order, it was determined that this action is ''significant'' under section 3(f)(1) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Economic Analysis

Establishing a class exemption that permits plans to cross-trade can be expected to have a variety of positive economic effects that will considerably exceed the direct costs incurred by plans to comply with the record keeping and reporting requirements enumerated in the PRA section of the final class exemption. By removing existing barriers to these types of transactions, the exemption will significantly increase the utilization of cross-trading among index and model-driven portfolios. This will result in substantial savings to plans by lowering the transaction costs in a number of ways. Although there is currently no source of data that can be used to precisely estimate the level of these savings or the distribution of these effects among various parties, extrapolating from several sources can provide a reasonable estimate of their overall magnitude.

Limiting the exemption to index and model-driven portfolio management techniques should preclude any changes in the incidence of trading activity. In contrast to active management techniques, index and model funds will continue to execute trades at the same levels that they would in the absence of the exemption because their trading is motivated by the need to remain within their tracking parameters rather than in response to marginal changes in expected transaction costs. It is therefore reasonable to assume that the changes in costs will result solely from a decrease in the cost of executing many individual trades rather than from a change in the levels of trades.

Changes in the costs of individual trades will result from (1) the elimination of commission costs that would otherwise be associated with a trade, (2) the avoidance of bid-ask spreads that impose costs for transactions executed through dealers, (3) the absence of fees and taxes that might otherwise apply, and (4) the avoidance of the market impact of large trades which might otherwise require price concessions to execute or effect the trade which would directly impact the market value of the resulting holdings.

Only the first three of these effects are considered in the analysis. The last, market impact, is not included because it can reasonably be expected to have largely offsetting effects. ERISA plans are equally likely to be on either side of a cross trade and in most cases are likely to represent both parties to a transaction. In some instances, they will be advantaged by avoiding the changes in an individual securities price that might otherwise have resulted from a trade executed through another venue. In other circumstances, they will be disadvantaged. An equal probability of either will result in essentially offsetting effects in the aggregate.

A similarly conservative approach is taken in regard to two other aspects of the analysis. These are a result of the limitations in the available data and the absence of any experience with the full scope of relief afforded by the exemption on which to base an estimate. Although some data on the amount of ERISA plan assets in index funds is available, there is no similar source of reliable information to estimate the size of ERISA model driven assets to which the exemption would apply. There is also no experience with more extensive opportunities for cross-trading that are available under the exemption resulting from increased flexibility in allocating cross-trading opportunities, the extension of relief to a broader range of entities, and the inclusion of debt securities in the allowable transactions. Consequently the analysis is limited to index funds and does not incorporate increases in savings resulting from the extension of relief to circumstances with which there is no prior experience. As such, it should be interpreted as an extremely conservative estimate that is likely to represent a lower bound of the level of savings that can be expected to accrue to plans.

Two large financial services firms currently operating under individual exemptions that permit cross-trading among ERISA plans provided estimates of the savings in commissions, spreads, and fees that they have experienced managing both ERISA and non-ERISA indexed assets. These two estimates represent a significant portion of the ERISA plan universe and are therefore likely to be representative of the cost savings likely to occur. One of the firms estimated the cost savings to be approximately $275 million per year for a total indexed portfolio of $400 billion. The other estimated a savings of $207 million for $441 billion of indexed assets under management. Both of these include ERISA and non-ERISA assets, however, the experience should be indicative of expected results because the nature of trading costs for indexed funds should be virtually identical. Averaging these figures yields an estimate that costs savings of .057% or 5.7 basis points for each dollar of affected ERISA plan assets can be expected.

A recent survey of pension funds indicates that among the largest private sector defined benefit pension funds, 14% of the total assets were held in index funds. Among defined contribution plans, index funds constituted 12% of total assets. Applying these percentages to the most recent estimates of the total value of private pension funds yields an estimate of approximately $584 billion of ERISA pension funds that are currently managed as indexed funds.

Applying the estimate of $.00057 of savings for each dollar of assets under management results in an estimated level of cost reductions of approximately $332 million per year that will result from the class exemption. This total cost savings estimate overlaps, in part, current costs savings experienced by plans whose managers have cross-trading programs covered under existing individual exemptions. While certain large index fund managers are successfully operating cross-trading programs for ERISA plans at this time, the class exemption is expected to create additional cost savings for these plans by increasing the number and frequency of cross-trading opportunities among the managers' client accounts. In addition, new cross-trading opportunities will be made available for plans whose assets are managed by entities that currently do not have individual exemptions. Finally, the conservative nature of the total estimate is highlighted by the fact that cost savings associated with cross-trading by model-driven funds have not been factored into the estimate of total cost savings due to the absence of available data.

SUPPLEMENTARY INFORMATION: On December 15, 1999, the Department of Labor (the Department) published a notice in the **Federal Register** (64 FR 70057) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA,[1] and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).[2] The Department's determination to proceed with the proposed class exemption was based, in part, on information received from interested persons in response to a notice (the Notice) published in the **Federal Register** on March 20, 1998 (63 FR 13696).

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. Fourteen (14) public comments were received by the Department. Upon consideration of all the comments received, the Department has determined to grant the proposed class exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of Comments Received

The comments received by the Department were generally supportive of the issuance of a separate class exemption for cross-trading of securities by Index and Model-Driven Funds. However, many of the commenters requested specific modifications to the proposal in the following areas:

1. *Accounts Permitted to Cross-Trade.* Several comments noted that section I(a) and (b) of the proposal does not explicitly permit cross-trades between two or more Large Accounts. These comments noted that when more than one Large Account is buying or selling a particular security as part of a manager's cross-trading program, that security could be traded between two Large Accounts, two Index or Model-Driven Funds, or any combination thereof. In the operation of a cross-trading program, the matching of the buyer and seller would be coincidental. The commenters believe that a manager should be permitted to submit trade lists from each Large Account to its cross-trade allocation system and allow trades submitted on behalf of one Large Account to be crossed with trades submitted on behalf of another Large Account.

The Department notes that section I(a) and (b) of the proposal does not provide relief for cross-trades exclusively between two or more Large Accounts. The Department is of the view that such cross-trading would be outside the scope of the exemption because, among other things, there would be no ''triggering event'' to limit the amount of discretion exercised by the manager where such transactions occurred solely between Large Accounts.

The Department does recognize, however, that a manager's cross-trading program that complies with the requirements of the proposal may produce cross-trade opportunities that result from both triggering events of particular Index and Model-Driven Funds as well as from the decision of an independent fiduciary to restructure all or a portion of a Large Account's portfolio. Under such circumstances, the Department anticipates that the allocation of buying and selling opportunities across all Funds and Accounts participating in the cross-trading program may result in some individual cross-trades between two Large Accounts. In such an event, the exemption would permit the ''coincidental'' matching of a buyer and seller of particular securities where both buyer and seller are Large Accounts since such cross trades would be part of a unified process-driven cross-trading program where the allocations of available securities (from all Funds and/or Large Accounts) resulted from an objective process which did not permit the exercise of discretion by the manager, as required under section II(d) of the exemption. The Department has revised section I of the exemption to clarify this point.

Another commenter noted that no specific relief for cross-trades between two Large Accounts may be necessary where the decision to liquidate or restructure is made by an independent fiduciary or independent Account representative, and, therefore, the manager would not be acting as a fiduciary for either side of the transaction. Thus, the commenter suggested that the Department may wish to clarify whether additional relief for cross-trades exclusively between two or more Large Accounts is necessary. Alternatively, the commenter suggested that section I(b) of the proposal be modified to explicitly permit cross-trades solely between Large Accounts.

In response to this comment, the Department notes that violations of section 406(b)(2) of the Act would occur if the manager used its discretionary authority to determine whether to cross-trade securities between two Large Accounts at least one of which holds plan assets, which securities to cross-trade, the timing of such cross-trades,

[1] The Department has responsibility for the administration and enforcement of section 8477 of FERSA. Section 8477 establishes the standards of fiduciary responsibility and requirements relating to the activities of fiduciaries with respect to the Federal Thrift Savings Fund. All references herein to the fiduciary responsibility provisions of Part 4 of Title I of ERISA also apply to the corresponding provisions of FERSA. Accordingly, the relief provided under this class exemption applies to cross-trades of securities by the Federal Thrift Savings Fund.

[2] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

and the amount of securities to cross-trade notwithstanding that the overall determination to restructure the accounts was made by independent fiduciaries.

Accordingly, except as provided above, the Department has determined not to expand the relief provided under this exemption to include cross-trades solely between two or more Large Accounts. The Department notes that the final exemption provides a manager with a significant amount of time in which to conduct cross-trades for a Large Account in connection with a specific portfolio restructuring program. A manager's discretion to time specific cross-trades for two Large Accounts, absent the limitations provided by a process-driven cross-trading program involving ''triggering events'' for Index and Model-Driven Funds, would entail the type of discretion commonly exercised by managers for ''actively-managed'' accounts. In this regard, relief for cross-trades by ''actively-managed'' accounts and pooled funds containing ''plan assets'' will be considered by the Department in a separate proceeding.

2. *Use of closing prices.* One commenter suggested that the Department modify the requirement that all cross-trades occur at the closing prices for the securities on the relevant market in order to allow for alternate pricing methodologies (*e.g.,* ''volume weighted average price'' or ''VWAP''), after appropriate disclosure to the affected plans. Section II(a) of the proposal requires that the cross-trade be executed at the closing price, as defined in section IV(h). Section IV(h) of the proposal defines ''closing price'' as the price for a security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source used to establish the closing price and the time frame after the close of the market in which the closing price will be determined. The commenter does note that ''closing prices'' are the most appropriate prices currently in use for cross-trades of securities by Index and Model-Driven Funds, whose objective is to track the return of an index, since the calculation of an Index Fund's ''tracking error'' is based on closing prices for the securities listed in the relevant index. However, the commenter states that index providers may utilize alternative pricing methodologies in the future and suggests that the Department should consider broadening the exemption to include such pricing methodologies.

The Department notes that many commenters have indicated that the use of closing prices for cross-trades of securities by Index and Model-Driven Funds is common industry practice at the present time. The Department does not believe that it has sufficient information at this time to determine which types of alternative pricing methodologies may be used by managers in the future or how such pricing systems would enable Index and Model-Driven Funds to better achieve their investment goals and strategies. Therefore, the Department has determined not to modify the requirement that cross-trades be executed at the closing price. The Department would be prepared to consider additional relief at a later date upon proper demonstration that the appropriate findings can be made under section 408(a) of the Act with respect to other pricing methods for cross-traded securities.

3. *''Triggering Events'' and Cross-Trade Executions.* Several of the comments objected to the requirement in section II(b) of the proposal that any cross-trade of securities by a Fund be executed no later than the close of the second business day following a ''triggering event.'' These comments noted that previously issued individual exemptions for cross-trades by Index and Model-Driven Funds allowed cross-trades to be executed within three (3) business days of a ''triggering event'' and that the proposal's reduction of this requirement to two days is inconsistent with the stated premise of the proposal that cross-trading is beneficial to plans. Other comments noted that, once an investment decision is made, a manager should have 5 days to trade after a ''triggering event''—the same period of time to execute the trade as is permitted under the safe harbor provided in the Department's regulations for determining whether a broker-dealer is a fiduciary when it executes a securities transaction on behalf of a plan (see 29 CFR 2510.3–21(d)). Another comment requested that section II(b) be revised to require that cross-trades be executed either within three (3) days of a ''triggering event,'' or within such other period of time as the manager may disclose to the independent plan fiduciary pursuant to the disclosure requirements under section II(l) of the proposal.

In response to the comments, the Department has determined that it would be appropriate to modify section II(b) of the final exemption to require that all cross-trades by a Fund be executed no later than the close of the third business day following a Fund's ''triggering event.'' The Department notes that a three-day limit for cross-trades by a Fund following the relevant ''triggering event(s)'' has worked successfully in the past for managers who were granted individual exemptions.[3]

4. *Blackout Period for Cross-Trades by Model-Driven Funds.* Many of the comments objected to the requirement in section II(c) of the proposal that no cross-trades by a Model-Driven Fund may take place within ten (10) business days following any change made by the manager to the model underlying the Fund. The preamble to the proposal indicated that this restriction is intended to prevent model changes which might be made by managers, in part, to deliberately create additional cross-trading activity. The comments suggested that such a long delay on the ability of a manager to cross-trade after a change in the computer model was unnecessarily restrictive. According to the commenters, this condition would prevent cross-trading during the 10-day ''blackout'' period even though other ''triggering events'' were occurring in the Fund. Other commenters noted that there are already sufficient restrictions on a manager's discretion built into the proposal.

While most comments objected to the 10-day ''blackout'' period, several of the comments indicated that a 5-day period would be sufficient to safeguard against the Department's concerns regarding model changes that may be timed to create additional cross-trading opportunities. Other commenters suggested that, rather than imposing a ''blackout'' period for an arbitrary period of time (*e.g.,* 5 or 10 days), a more flexible approach could be used where a Model-Driven Fund would be able to cross-trade following the period of time necessary to complete the first re-balancing of the Fund's portfolio after the change is made by the manager to the Fund's model. Thus, under this approach, the ''blackout'' period could be less than three (3) days. One comment suggested that any cross-trading ''hiatus'' for a Fund should not be more than three (3) days. Other comments simply requested that the condition for a ''blackout'' period after a model change be deleted. Still other comments noted that, in the absence of a ''blackout'' period, a requirement for 10-day prior notice of a model change to each relevant plan's independent fiduciary should suffice. Finally, some

[3] See, for example, Prohibited Transaction Exemption (PTE) 95–56, 60 FR 35933 (July 12, 1999), regarding Mellon Bank, N.A., and its Affiliates.

commenters requested clarification that model changes made either (i) at the direction of a client plan, or (ii) as a direct result of input changes furnished by a third party data vendor (*e.g.,* BARRA or Vestek), would not invoke a ''blackout'' period because such model changes would not be the result of an exercise of discretion on the part of the manager.

The Department continues to believe that some ''blackout'' period is necessary to prevent managers from exercising their discretion over the criteria or data used for a model to generate specific cross-trade opportunities. However, in recognition that a 10-day restriction may be too long a period to prevent a Model-Driven Fund from cross-trading, the Department has decided to modify the final exemption to require that cross-trades not take place within three (3) business days following any change made by the manager to the model underlying the Fund.

In addition, with respect to the one commenter's concerns that model changes resulting from independent events should not invoke a ''blackout'' period for a Model-Driven Fund, the Department acknowledges that any change to a model which is not the result of an exercise of discretion by the manager (*e.g.,* changes directed by an independent plan fiduciary or furnished by a third party data vendor whose model is being used by the manager) would not require a ''blackout'' period for cross-trades by such Fund.

5. *Restrictions on Cross-Trades by a Manager Plan.* One comment objected to, and requested the deletion of, the requirement in section II(e) of the proposal that no more than ten (10) percent of the assets of any Fund or Large Account engaging in a cross-trade may be comprised of assets of employee benefit plans maintained by the manager for its own employees (*i.e.,* a Manager Plan), for which the manager exercises investment discretion. The comment stated that this condition would create a disincentive to in-house management and may cause investment managers to place assets of a Manager Plan with outside managers solely on the basis of the potential cost savings that the outside managers could derive from cross-trades.

The comment noted that for large plans, in-house management is frequently more cost-effective and keeps the asset management function closer to the people who have the most to gain from maximizing investment performance and minimizing investment risk. The comment further noted that larger in-house fiduciaries also manage assets for unaffiliated plans and other institutional investors, often as a result of a corporate spin-off with an accompanying plan restructuring. The comment stated that it understood the Department's concern regarding a manager's potential ability, through cross-trades, to unduly benefit a Manager Plan at the expense of its outside clients. However, the commenter believes that the other conditions of the proposal, including ''triggering events'' for cross-trades, detailed disclosures of cross-trading procedures and reporting of cross-trades resulting from a portfolio restructuring, would serve as a check on the manager's ability to favor a Manager Plan. Moreover, the commenter notes that to the extent that a Manager Plan's assets are commingled with assets of outside clients that are held in an Index or Model-Driven Fund managed as a collective investment fund, it would not be possible for the manager to ''favor'' only the Manager Plan in that Fund, even if the Manager Plan's assets represented more than 10 percent of the Fund's total assets. In any event, the comment noted that the 10 percent limitation should not apply to cross-trades that are made solely between Manager Plans.

With respect to the commenter's request to delete the 10% limitation in section II(e) of the proposal, the Department notes that, without such a percentage limitation, a substantial majority of the investors in a Fund could be comprised of Manager Plans. The Department does not believe that deletion of this percentage requirement would ensure a sufficient level of independent investor oversight of the manager's cross-trading program.

However, in consideration of the arguments raised by the commenters, the Department believes that a 20% limitation would still ensure a sufficient level of independent investor oversight in a Fund and would not unduly restrict the investment opportunities available for a Manager Plan with respect to such Funds. Therefore, the Department has modified section II(e) to increase the percentage limitation to 20%.

Accordingly, this exemption does not provide relief for cross-trades of securities of Index and Model-Driven Funds maintained by a manager under circumstances where the assets of the Manager Plans comprise all or a high percentage of the assets of the Fund. As noted above, the Department believes that the presence of independent fiduciaries to approve of plan participation in cross-trading programs following receipt of meaningful disclosures and the ability of such fiduciaries to periodically monitor the arrangements provide important protections under the exemption. However, in response to several comments, the Department wishes to take the opportunity to state that the granting of this exemption does not foreclose future consideration of additional relief for cross-trading transactions that do not fit within the framework developed by the Department for this exemption. For example, the Department is currently considering additional relief for transactions involving assets of plans managed by in-house managers, as well as for transactions involving discretionary asset managers.

With respect to the comments requesting that the exemption allow cross-trades to occur solely between two or more Manager Plans, the Department notes that relief for these transactions could involve the exercise of discretion on both sides to a transaction that is inconsistent with the underlying concept of the proposal—which is to provide relief for cross-trades made pursuant to ''process-driven'' investment strategies. For this reason, the Department has determined not to revise the exemption in this regard.

Another comment stated that section II(e) of the proposal does not adequately address how the independent authorization conditions in section II(i) through (n) of the proposal would apply to a Manager Plan, given that the plan fiduciary responsible for the plan's investment matters is unlikely to be independent of the manager. This comment suggested that the Department not require an independent fiduciary authorization for a Manager Plan's participation in the manager's cross-trading program. The commenter stated that the suggested modification would be consistent with other exemptions that do not apply an independent authorization requirement to plans of the fiduciary for whom relief is provided.[4] Accordingly, the commenter requests that the Department adopt a similar provision under the final exemption.

The Department concurs with the comments and has determined to modify section II(h) of the final exemption (formerly section II(i) of the proposal) to clarify that the requirement that the authorizing fiduciary be independent of the manager shall not apply in the case of a Manager Plan. Nevertheless, the appropriate fiduciary for the Manager Plan must still receive the proper disclosures and provide an

[4] In this regard, see section IV(d)(1)(A) of PTE 86–128 (51 FR at 41696, November 18, 1986).

authorization for the Manager Plan to participate in the manager's cross-trading program. This clarification modifies the disclosure and authorization requirements applicable to a plan's participation in a manager's cross-trading program, as described in section II(h) through (l) of the final exemption (formerly section II(i) through (m) of the proposal).

In addition, the Department has also determined to modify the requirements contained in section II(n) of the proposal, relating to disclosures to, and authorization by, a fiduciary of a Large Account who is independent of the manager for cross-trades in connection with a portfolio restructuring for the Large Account. To clarify this matter, the Department has revised section II(m) of the final exemption (formerly section II(n) of the proposal) by adding the parenthetical phrase "* * * (other than in the case of any assets of a Manager Plan)" to the requirements for an independent fiduciary discussed in section II(m)(1) through (4). In this regard, the Department notes that the final exemption still requires that proper disclosures be made to, and written authorization be made by, a Manager Plan's fiduciary in order for the Manager Plan to participate in a specific portfolio restructuring program.

6. *Exclusion of Thinly-Traded Equity Securities.* A number of commenters objected to the condition contained in section II(f)(1) of the proposal that required that cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources. In this regard, the terms "widely-held" and "actively-traded" are deemed to include any security listed in an "Index" (as that term is defined in section IV(c) of the proposal).

The comments stated that this requirement was not necessary for an exemption for cross-trading by Index and Model-Driven Funds. According to the comments, security selection for such Funds is driven solely by objective factors. The commenters argued that the level of trading and diversity of holdings for securities are not relevant to security selections made by Funds and that such factors should not serve as a constraint on the ability of such Funds to cross-trade. Generally, the comments noted that if market prices are readily available, the exclusion of "closely-held" and "thinly-traded" equity securities is unduly restrictive. They further argued that such limitations would prevent use of the exemption for many "small-cap" and foreign equity securities. Thus, the commenters urged the Department to delete the requirement that cross-traded equity securities be "widely-held" and "actively-traded."

As an alternative approach, one commenter suggested a limitation based on a comparison of the size of the cross-trade to the prior public trading volume in the security over a reasonable period of time prior to the date of the transaction. Such a volume limitation would prevent cross-trades of equity securities where the total volume of shares being cross-traded would exceed a certain percentage of the total number of shares publicly traded on the market during a particular period of time.

The Department is not persuaded by the arguments submitted in favor of deletion of the requirements contained in section II(f)(1) that equity securities that are cross-traded must be "widely-held" and "actively-traded." The Department continues to believe that cross-trades of "thinly-traded" securities raise issues as to whether both sides of the cross-trade have benefitted equally from the avoidance of adverse market impact. The avoidance of market impact would be more dramatic with "thinly-traded" equity securities than with equity securities that are "widely-held" and "actively-traded." [5] Similarly, the avoidance of liquidity restraints would be more dramatic with "thinly-traded" equity securities than with equity securities that are "widely-held" and "actively-traded."

In order to address its concerns without unnecessarily restricting the scope of relief under the proposal, the Department determined to deem equity securities that are included in an Index (as defined in section IV(c) of the exemption) to be "widely-held" and "actively-traded" for purposes of the exemption. However, the Department notes that the exemption does not preclude a manager from cross-trading a particular equity security not included in an index if the manager otherwise determines that such security is "widely-held" and "actively-traded." [6]

With respect to the comment suggesting a trading volume limitation, the Department notes that other commenters have discouraged it from addressing its concerns about cross-trades of "thinly-traded" securities through volume limitations, based on arbitrary percentages of the average daily trading volume for the securities. These commenters noted that the systems used by managers to allocate cross-trades among various Funds would have difficulty monitoring and re-allocating cross-traded securities to conform to such volume limitations.

In consideration of the above, the Department has determined not to modify section II(f)(1) in the final exemption.

7. *Cross-Trades of Securities Issued By the Manager.* Several comments objected to the requirement in section II(h) of the proposal that cross-trades not involve securities issued by the manager, unless the manager has obtained a separate prohibited transaction exemption for the acquisition of such security. One commenter noted that, although some institutions have obtained individual exemptions to deal with issues relating to acquisitions and dispositions of the manager's own stock by its Index and Model-Driven Funds,[7] others have concluded that no exemptive relief is necessary based on the facts and circumstances surrounding their individual situations. The commenter noted that, with regard to certain Index Funds, the manager does not exercise discretion in choosing the individual stocks to buy or sell, but rather seeks to mechanically purchase stocks selected through objective criteria which is outside of the manager's control. For example, in an Index Fund that is designed to replicate the exact capitalization-weighted composition of the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index), if the manager's stock is included in the index, that stock will be purchased in the proportion dictated by the index without the manager exercising any investment discretion. In such instances, the commenter stated that a manager's failure to acquire the stock would cause "tracking error," thereby subverting the goal of plan investors in

[5] The Department notes that these concerns would also arise with "thinly-traded" debt securities. However, since "thinly-traded" debt securities of different issuers with the same coupon rate, maturity, and credit rating are relatively fungible, the Department did not believe that it would be appropriate to apply these concepts to such securities for purposes of this exemption.

[6] With respect to the selection criteria for securities included in a Fund's portfolio which are not included in an Index, the Department assumes that any screening criteria and/or weighting procedures used to create the portfolio will be determined using purely mathematical computations based upon objective raw data. In addition, the Department assumes that the investment management agreement relating to each Fund, as approved by plan investors in the Fund, would set forth the specific dates on which the Fund's portfolio will be re-balanced. In this regard, the Department notes that no relief would be provided under this exemption for violations of section 406(b)(1) of the Act which may occur as a result of a manager's exercise of fiduciary authority or discretion to affect the components of an Index.

[7] For example, see Prohibited Transaction Exemption (PTE) 2000–30, 65 FR 37166 (June 13, 2000), regarding Barclays Bank PLC and its Affiliates.

the Fund to replicate the performance of the index. Other comments stated that it was not clear why a restriction for cross-trades of a manager's own stock is necessary and that there appears to be no reason to exclude such securities from the exemption. The Department accepts these comments and has determined to delete section II(h) of the proposal from the final exemption.

However, the Department notes that the exemption does not provide relief for any discretionary changes in an Index or Model-Driven Fund made by a manager, or any other discretionary decisions by the manager, which are designed to result in cross-trades of the manager's own stock for the benefit of the manager. Only cross-trades generated by non-discretionary changes in a Fund (*e.g.,* changes in the capitalization weighting of the manager's stock within an index, or the addition or removal of the manager's stock from an index) are covered by this exemption. Accordingly, no relief is provided for such discretionary changes regarding the manager's own stock.

As noted previously, all conditions in the final exemption have been re-designated to reflect the deletion of section II(h) of the proposal.

8. *Disclosure and Authorization Requirements.* Many comments raised concerns about the scope of the disclosure and authorization requirements contained in section II(j), (k), (l) and (m) of the proposal. In this regard, the comments noted that section II(i) of the proposal expressly states that the written authorization requirement for a plan's participation in a manager's cross-trading program only applies to plans investing in an Index or Model-Driven Fund that holds ''plan assets'' subject to the Act. The commenters urged the Department to clarify that the notice and disclosure requirements contained in section II(j), (k), (l) and (m) of the proposal similarly apply only to independent fiduciaries of employee benefit plans that invest in Funds holding plan assets.

The Department acknowledges the commenters' concerns regarding the intended scope of the disclosure and authorization requirements of the proposal and wishes to clarify that such requirements were meant to apply only to those Index and Model-Driven Funds which hold ''plan assets,'' as defined under the Department's regulations (*see* 29 CFR 2510.3–101). Therefore, the Department has revised section II(i) and (l) of the final exemption (formerly section II(j) and (m) of the proposal) accordingly.

Other comments objected to the prior written authorization requirement contained in section II(i) of the proposal, noting that prior individual exemptions granted by the Department for cross-trades by Index and Model-Driven Funds did not contain a similar requirement. These comments expressed the view that requiring prior written consent from an independent plan fiduciary as a condition for the plan to invest in a Fund that is part of a manager's cross-trading program serves no useful purpose. The comments noted that if a plan fiduciary were to develop any objections to cross-trading on philosophical grounds, then the plan would be free to withdraw from the Fund without penalty. The commenters believed that imposition of such a requirement will be perceived negatively by plan sponsors as an unnecessary obstacle to their ability to freely invest and reinvest plan assets in a manager's Funds.

The Department disagrees with the commenters' assertion that prior written consent from an independent plan fiduciary is unnecessary. The Department notes that part of the reason for proposing a class exemption for cross-trades of securities by Index and Model-Driven Funds was to address issues which had come to the Department's attention subsequent to its granting of a number of individual cross-trading exemptions.

As stated in the Notice published on March 20, 1998, the Department recognizes that it is important to retain the flexibility to periodically review its exemption policy in the context of changed circumstances or new facts that may be brought to its attention (*see* 63 FR at 13698, first paragraph of section entitled ''Issues and Developments''). The Department became aware of new issues involving cross-trades, including cross-trades by certain ''passive'' investment managers, through enforcement proceedings that raised concerns about whether plan fiduciaries were being provided with adequate disclosures regarding a manager's cross-trading program.

The Department continues to believe that adequate disclosures are necessary in order to enable a plan fiduciary to understand a manager's cross-trading program and how that program may affect the investment goals and objectives of Funds in which the plan may invest. The Department notes that the written authorization required by section II(i) of the proposal will apply to all of the Funds which participate in a manager's cross-trading program. Thus, once an authorization is provided by an independent fiduciary, a plan will be able to invest in any of the Funds without any additional authorization. The Department further notes that the authorizations required under the exemption for existing plan investors in any Funds may be obtained through a separate notice which describes the Funds' participation in the manager's cross-trading program. Under this requirement, failure to return the termination form by the date specified in the notice will be deemed to be an approval by the independent plan fiduciary of the plan's participation in the cross-trading program. Therefore, the Department has determined not to revise the authorization requirements in the final exemption.

With respect to the required content for the disclosures that must be furnished pursuant to sections II(l) and (m) of the proposal, the commenters were concerned that the initial and annual notices must identify all Index and Model-Driven Funds participating in the manager's cross-trading program, together with detailed information regarding the ''triggering events'' and other information relating to each Fund. The comments noted that requiring such disclosures would cause managers to violate confidentiality restrictions contained in many client agreements and would also raise privacy concerns for clients who do not wish their identity, or the fact that they maintain an investment account with the manager, to be disclosed. In this regard, the comments noted that managers are restricted from disclosing confidential information about clients, particularly the Funds in which clients invest. In addition, the comments stated that such detailed disclosure would be of little practical value to plan fiduciaries when deciding whether to authorize or maintain plan investments in a particular Fund. As an alternative, several comments suggested that the initial and annual notices should include only general descriptions of the types of Funds that participate in the manager's cross-trading program and of the ''triggering events'' that give rise to cross-trade opportunities.

The Department acknowledges the concerns expressed by the commenters regarding the confidentiality restrictions contained in client agreements and privacy concerns relating to the identity of such clients and the Funds in which they may invest. Nevertheless, the Department continues to believe that the required disclosures will be useful to a plan fiduciary in understanding the scope and operation of the manager's cross-trading program and whether participation in the program remains in the plan's best interests. However, the Department does not intend for the disclosures in section II(k) of the

exemption (relating to a manager's ongoing disclosures of information about the cross-trading program) or section II(l) of the exemption (relating to disclosures for an annual re-authorization of the cross-trading program by an independent plan fiduciary) to require that privileged or confidential information be revealed by the manager. For example, these provisions, as revised herein, do not require a manager to furnish to independent plan fiduciaries the identity of any clients of the manager that are invested in other Funds that are added to the cross-trading program. In addition, any information disclosed by the manager regarding new ''triggering events'' for existing Funds need only provide such information with respect to Funds in which the plans are invested. With respect to disclosures regarding new ''triggering events'' which must be provided to the relevant independent plan fiduciaries of the affected Funds (as discussed further below), the Department does not believe that the final exemption requires the disclosure of privileged or confidential information.

Other commenters requested that the Department clarify that portion of section II(l) of the proposal which requires that the manager notify each relevant independent plan fiduciary of the addition of Funds to the manager's cross-trading program, or changes to, or additions of, ''triggering events'' regarding Funds, following a plan's initial authorization of participation in the program. Specifically, the comments requested clarification as to whether the phrase ''each relevant independent plan fiduciary'' was intended by the Department to be limited to fiduciaries of plans invested in those specific Funds that are added to a manager's cross-trading program or whose ''triggering events'' have been modified. The comments noted that it would be burdensome to require managers to notify all plans regarding modifications to ''triggering events'' that may occur in all Funds, including Funds in which such plans are not invested, just because such Funds participate in the cross-trading program. In addition, it would be difficult to provide notice to all plans prior to, or within 10 days following, such events affecting any of the Funds.

In consideration of such comments, the Department has modified section II(k) of the final exemption (formerly section II(l) of the proposal) to provide that the ongoing notices of information that must be furnished to ''each relevant independent plan fiduciary'' are required to be made only to those fiduciaries whose plans are invested in the affected Funds (*i.e.*, the Funds added to the program or whose ''triggering events'' have been changed).

Other commenters stated that certain of the disclosures are unnecessary. For example, several comments objected to the statement required by section II(k) of the proposal, relating to investment decisions for a Fund not being based on the availability of cross-trade opportunities. These comments noted that this statement would be duplicative of other information required in the proposal and would provide no added protection to plans, other than the manager's promise to follow the conditions of the exemption. Certain comments objected to the disclosures described in section II(l) of the proposal including the required statement that ''* * * the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction * * *.'' In addition, section II(l) of the proposal required that the Manager explain how its cross-trading practices and procedures will mitigate such conflicts. According to the comments, following the terms of the exemption should be viewed as precisely what is necessary to mitigate the conflicts. Thus, the commenters believed that it will be misleading to inform client plans that the operation of a manager's cross-trading program, even with adherence to the terms of the proposed exemption, will still create conflicts.

The Department believes that specific statements relating to the fact that investment decisions for a Fund will not be based on cross-trade opportunities (as described in section II(k) of the proposal), and that there are potential conflicts of interest in such cross-trades (as described in section II(l) of the proposal), are important to an independent plan fiduciary's understanding of the issues involved with cross-trades of securities. The Department notes that, in any cross-trading program, including cross-trading programs maintained by ''passive'' investment managers, there would be a potential for abuse if a manager were able to control cross-trade opportunities to favor the interests of particular clients. Therefore, the Department has determined not to revise the exemption as requested.

Section II(l) of the proposal requires that independent plan fiduciaries be furnished with detailed disclosure of the procedures to be implemented under the manager's cross-trading program (including the ''triggering events'' that will create cross-trading opportunities, the independent pricing services that will be used by the manager to price the cross-traded securities, and the methods that will be used for determining closing price). The comments noted that the preamble to the proposal suggests with respect to foreign securities that the applicable independent pricing source should provide the price in local currency rates and, if that currency is other than U.S. dollars, also provide the U.S. dollar exchange rate (*see* first paragraph of Section IV.B. of the preamble, 64 FR at 70062). In this regard, the comments noted that most pricing services that price foreign securities do not provide currency conversion rates. These commenters suggested that managers be allowed to use another independent service to provide such conversion rates, so long as the service is disclosed to plan investors.

The Department acknowledges the commenter's concerns, based on the language contained in the preamble to the proposal. However, the Department did not intend to prevent a manager from using another independent service to provide the appropriate currency exchange rates for a foreign security. Thus, the Department notes that no modification to section II(k) of the final exemption (formerly section II(l) of the proposal) is necessary.

A number of the comments noted that Section II(m) of the proposal (relating to a plan's annual re-authorization of its participation in the manager's cross-trading program) appears to require, among other things, that each plan fiduciary be notified annually of: (i) Any change in the ''triggering events'' in the Funds in which their plans are invested; (ii) any change in the ''triggering events'' in the Funds in which their plans are not invested; and (iii) any ''triggering events'' and other disclosure items for new Funds added to the cross-trading program since the last annual notice. These comments stated that the latter two categories of disclosures noted above are irrelevant to a plan fiduciary who has no assets invested in those Funds. The commenters believe that such information in the annual disclosures will make it more difficult for plans to properly analyze data which is relevant to an annual re-authorization of the plan's participation in the manager's cross-trading program. The comments suggested that annual disclosures to a plan fiduciary should be limited to that material which is relevant to its plan's investments in the manager's Funds. If a plan fiduciary determines to invest in other Funds for which no annual disclosure information has been previously provided, the fiduciary would then be provided with

the material relevant to the new Funds in such annual disclosures.[8]

Upon consideration of these comments, the Department believes that some plan fiduciaries may still find information about other Funds to be useful and should be provided that information by the manager upon request. Therefore, in order to limit the scope of the annual disclosures required in section II(l) of the exemption (formerly section II(m) of the proposal), the Department has modified that section to read as follows:

''* * * Such annual re-authorization must *provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested as well as explicit notification that the plan fiduciary may upon request obtain* disclosures regarding any new Funds *in which the plan is not invested* that are added to the cross-trading program, or any new triggering events that may have been added to existing Funds *in which the plan is not invested,* since the time of the initial authorization * * * etc.'' [emphasis added]

A commenter requested that the annual re-authorization requirement contained in section II(m) of the proposal be deleted in its entirety. The commenter stated that coordinating such a re-authorization would entail the same administrative burdens as a requirement for periodic notice of new Funds to all plan fiduciaries investing in Funds which participate in the manager's cross-trading program. According to the commenter, a plan could request that the plan's investment in any Fund that participates in the cross-trading program be terminated without penalty. Thus, the commenter maintained that a plan's participants and beneficiaries should be adequately protected without having to re-authorize participation in the cross-trading program every year.

In the event that the Department determined to retain the annual re-authorization requirement, the commenter requested two modifications to section II(m) of the proposal. First, the commenter believed that providing a plan fiduciary with a list of new Funds participating in the manager's cross-trading program would not provide the fiduciary with any useful information. Therefore, the commenter requested that the requirement in section II(m) of the proposal for disclosure regarding new Funds added to the manager's cross-trading program or any new triggering events be modified to permit the manager to make such information available upon request. Second, the commenter noted that section II(m) of the proposal requires the use of a ''special termination form'' in the annual re-authorization. The commenter noted that there are other methods of communication which would be easier and more efficient for a plan fiduciary to use in the event that the fiduciary decides to terminate its prior authorization.

The Department has determined that it would not be appropriate to delete the requirement for plan fiduciaries of affected Funds to provide an annual re-authorization of their plan's participation in the manager's cross-trading program. The Department believes that annual re-authorization will help ensure effective monitoring of a cross-trading program by the affected plans. Therefore, the Department has retained this requirement in section II(l) of the exemption.

However, in response to the comments regarding the need for a special termination form to be sent to each plan fiduciary, the Department has modified section II(l) of the exemption (formerly section II(m) of the proposal) to permit other forms of written communication to be used to terminate an authorization. Thus, the following new sentence has been added to section II(l) of the final exemption:

''* * * In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request.''

In response to the comments regarding the requirement in the proposal for the annual disclosures to include a list of any new Funds participating in the manager's cross-trading program in which the plan is not invested, or any new triggering events for a manager's Funds in which the plan is not invested, the Department has previously noted above that section II(l) of the exemption has been modified to require that such information need only be provided by a manager upon request.

9. *Authorizations for Large Account Restructures.* Under section II(n)(3) of the proposal, a portfolio restructuring program must be completed within the later of: (i) 30 days of the initial authorization by an independent fiduciary of the Large Account; or (ii) 30 days of the manager's initial receipt of assets associated with the portfolio restructuring, unless such fiduciary agrees to extend this period for another 30-days. The comments requested a number of revisions and clarifications to this provision. First, the commenters noted that most portfolio restructuring programs are completed within a thirty (30) day period. However, very large portfolio restructurings may take considerably longer. In such instances, the commenters believe that it would be more efficient to allow the manager to obtain authorization to extend the 30-day restructure period at the time of the Large Account fiduciary's initial authorization. Second, one commenter questioned whether securities that cannot be cross-traded with the manager's Funds and, therefore, must be traded on the open market, are affected by the 30-day deadline. Third, another commenter suggested that the 30-day period should begin for each asset on the date on which the asset is included as part of the restructuring account. According to the comment, this change would be responsive to the fact that the manager or trading adviser for a Large Account may not receive all assets to be restructured at the same time.

In response to these comments, the Department has determined to modify section II(m)(3) of the exemption (formerly section II(n)(3) of the proposal) to allow the initial authorization by an independent fiduciary of the Large Account for a specific portfolio restructuring to be effective for 60 days. The 60-day restructure period can be extended for another 30 days if the independent fiduciary for the Large Account agrees to the extension. In addition, the Department wishes to clarify that only securities that are cross-traded are affected by the requirements of section II(m) of the final exemption.

Accordingly, the Department has revised section II(m)(3) of the exemption (formerly section II(n)(3) of the proposal) to provide that:

''* * **All cross-trades made in connection with* the portfolio restructuring program must be completed by the Manager within *sixty (60) days* of the initial authorization * * *'' [emphasis added]

In light of the Department's revision to section II(m)(3), the Department does not believe that any further relief is warranted.

10. *Record-keeping.* Several comments expressed concerns regarding the record-keeping requirements contained in section III(a) of the proposal. In this regard, section III(a)(2)

[8] With respect to such annual disclosures, it should be noted that all relevant independent plan fiduciaries of plans invested in a Fund that is added to a manager's cross-trading program, or has changed or added any ''triggering events'' for cross-trades by such Fund after the Fund is included in the program, will already have been provided a separate notice of such event(s) prior to, or within ten (10) days following, each event, as required by section II(k) of the exemption.

requires, among other things, that each manager retain, on a Fund by Fund basis, trade lists which specify the amounts of each security to be purchased or sold for a Fund. This information should be provided in sufficient detail to allow an independent plan fiduciary to verify that each of the investment decisions for the Fund were made in response to specific triggering events. Section III(a)(3) of the proposal requires that, on a Fund by Fund basis, the manager must record the actual trades executed on a particular day, noting which of those trades (including all cross-trades) resulted from triggering events. The comments noted that the preamble to the proposal does not seem to require that the notations necessary to meet the requirements of section III(a)(3) specify which specific triggering event caused each trade (or cross-trade), provided that it is clear that a triggering event(s) caused such trades.

Other commenters stated that the record-keeping requirements of section III(a) are unnecessary because, under the proposed exemption, an Index or Model-Driven Fund can only cross-trade as a result of a triggering event. In addition, these commenters suggested that such a record-keeping requirement would be extremely burdensome if it became necessary to ''tag'' each purchase or sale of a security to a specific triggering event. In such instances, the comments stated that the exemption would involve so much additional record-keeping and costs (*i.e.,* millions of dollars worth per year per manager) that no manager will be able to economically maintain or operate a cross-trading program for its client accounts. Conversely, the comments noted that if the Department believes that ''tagging'' is not required under the proposal, this record-keeping requirement should be deleted since all cross-trades by a manager's Funds will result from at least one ''triggering event'' in order to meet the conditions of the exemption. Other comments noted that records regarding specific triggering events should be retained only if the triggering event resulted in actual cross-trading.

In response to these comments, the Department notes that other commenters have indicated that the record-keeping requirements contained in section III of the proposal are consistent with their current record-keeping practices. In this regard, the Department understands that under the individual exemptions granted for cross-trades by Index and Model-Driven Funds, managers have established record-keeping and monitoring systems designed to ensure compliance with the terms and conditions of those exemptions.

The Department notes that the record-keeping requirements contained in the proposal, while more specific than those of the individual exemptions, were designed to be consistent with the record-keeping systems of managers operating cross-trading programs under the individual exemptions. Thus, the Department is not persuaded by the arguments submitted in favor of deletion of this record-keeping requirement. The Department continues to believe that records must be maintained with sufficient specificity to permit an independent plan fiduciary to verify compliance with the conditions of the exemption.

In response to the commenter's request for clarification as to whether the record-keeping requirements contained in section III(a) of the proposal would mandate that a manager's records demonstrate that each cross-trade by a Fund resulted from a specific ''triggering event,'' the Department believes that the following discussion will be helpful.

When more than one bona fide ''triggering event'' has occurred, the Department expects that a manager's record-keeping system will be able to demonstrate that the cross-trades by the Fund resulted from such ''triggering events.'' For example, if a manager's record-keeping system enables the manager to ''link'' purchases and sales of specific amounts of securities in each cross-trade by a Fund to ''triggering events'' within the 3-day period, then such a system would satisfy the record-keeping requirements of the exemption.

As discussed by the Department in the preamble to the proposal, the record-keeping requirements are intended to assure that independent plan fiduciaries will be able to determine whether Funds and their underlying models or indexes operate consistently in following the input of triggering event information. This information should be kept in sufficient detail to enable a replication of specific historical events in order to satisfy an inquiry by interested persons (as described in section III(b)(1) of the exemption). The Department further notes that records regarding specific triggering events need only be maintained if such events resulted in cross-trades that are subject to the conditions of this exemption.

Another comment noted that section III(a) of the proposal requires that the records must be ''* * * readily available to assure accessibility and maintained so that an independent fiduciary'' may obtain them within a reasonable period of time. The comment noted that most of the required records would be maintained electronically and archived after a few months. The commenter maintained that, while such records are retrievable within a period of days or weeks, the exemption should recognize that the volume of trading and records involved would make faster retrieval impossible. Another comment requested that the Department acknowledge that a ''reasonable period of time'' in this context would be thirty (30) days. In this regard, the Department acknowledges that thirty (30) days may be a reasonable period of time for obtaining and assembling the required information for interested persons if the volume and complexity of the cross-trading records that must be assembled for such persons is significant.

Other comments noted that making records available to plan participants and beneficiaries would be unduly burdensome and would add no significant additional protections.

The Department has determined that it would be appropriate to modify section III(b)(1) to exclude plan participants and beneficiaries unless such persons are participants or beneficiaries in a Manager Plan.

11. *Definition of ''Index Fund'' and ''Model-Driven Fund.''* Several comments noted that, unlike prior individual exemptions for cross-trading, the definition of the term ''Index Fund'' in the proposal (*see* section IV(a) below) requires not only that a Fund be designed to track the rate of return, risk profile and other characteristics of an independently maintained securities index, but also that such tracking occur either by ''* * * replicating the same combination of securities which compose such index'' or by ''* * * sampling the securities which compose such index based on objective criteria and data.'' The commenters urged the Department to clarify that this definition was not intended to preclude an Index Fund from holding cash, cash equivalents or other equitizing cash investments.

The Department concurs with this comment. The definition of the term ''Index Fund'' under section IV(a) of the exemption is not intended to prevent a Fund from holding cash, cash equivalents or other equitizing cash investments. For example, the Department notes that the definition of ''triggering event'' contained in section IV(d)(3) of the exemption specifically contemplates that a Fund may have an accumulation of cash which is attributable to interest or dividends on,

and/or tender offers for, portfolio securities.

In this regard, the Department recognizes that significant levels of cash or cash equivalents in an Index Fund generally will create ''tracking error'' vis-a-vis the independently maintained securities index which the Fund is designed to track. Therefore, assets other than securities which are included in the designated index will only be held by a Fund for a limited period of time.

However, the Department also understands that many managers use temporary cash investments to buy index futures contracts (*e.g.,* S&P 500 futures) in order to more precisely replicate the rate of return and other characteristics of the index prior to investing in the actual securities. It is the view of the Department that the term ''Index Fund'' would allow the use of futures contracts by an Index Fund in order to reduce ''tracking error'' and to achieve the designated investment objectives of the Fund provided that such use is disclosed to plan investors. The disclosures should adequately describe the appropriate parameters and limitations on a manager's use of futures contracts for a Fund.

In this regard, the Department's conclusion is based upon its understanding that ''passive'' investment strategies employed by managers for Index Funds do not primarily rely on futures contracts to achieve a Fund's investment objectives, but rather rely on such contracts as a means for temporarily investing cash accumulations in the Fund prior to actually investing in and holding securities contained in the index. Conversely, the Department is unable to conclude that an Index Fund which invests primarily in index futures contracts as a means of achieving its investment objectives would meet the definition of ''Index Fund'' under section IV(a) of this exemption.

Several comments noted that the definition of the term ''Model-Driven Fund'' under the proposal (see section IV(b) below) requires that the identity and amount of a Fund's securities be ''* * * selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager * * *'' These comments expressed concern that the definition does not appear to include separately managed Index Fund portfolios that exclude specific securities based on independent plan sponsor direction (as opposed to the determination of a computer model). In this regard, the comments noted that the Department has recognized in the past that the composition of a Model-Driven Fund may be influenced by client-initiated instructions to delete certain securities (*e.g.,* tobacco stocks) from an index that is otherwise being tracked. The comments suggested that the definition should be modified to include plan sponsor direction. According to the comments, this modification will not affect the intended purpose of the definition, which is to limit the amount of discretion a manager may exercise to affect the identity or amount of securities to be purchased or sold and to assure that such transactions are not part of an arrangement to benefit the manager.

In response to these comments, the Department notes that the definition of ''Model-Driven Fund'' in section IV(b)(1) of the exemption would include separately managed Fund portfolios which exclude specific securities based upon an independent plan fiduciary's (*e.g.,* a plan sponsor's) direction. The Department understands that managers will often use computer models which are designed to ''screen'' certain securities that are listed in an index from the acquisitions that a Fund would otherwise make, in order to accommodate plan sponsor direction. The definition of ''Model-Driven Fund,'' by allowing the identity of the securities which compose the Fund to be selected by a computer model, can accommodate Fund portfolios which are specifically designed to meet the guidelines dictated by plan sponsors. Thus, the Department does not believe that any further modification to this definition is necessary.

Another commenter noted that the definition of ''Model-Driven Fund'' in section IV(b) of the proposal is limited to Funds which use a computer model to ''transform an Index.'' The commenter stated that many Model-Driven Funds do not seek merely to ''transform an index'' by limiting their investment universe to those securities contained in a single Index, but rather seek to apply quantitative techniques using various forms of publicly available data across a wide spectrum of securities. For example, the Fund may seek to design a portfolio based on the largest 2500 stocks in the United States, based on market capitalization. These stocks may be contained in various independently maintained indexes, but not all 2500 stocks will be contained in a single index. The commenter urged the Department to delete the phrase ''* * * to transform an Index'' from section IV(b)(1) of the proposal and to substitute in its place the following ''* * * to achieve an investment return that is either based upon or measured by an Index.''

The Department does not believe that it would be appropriate in the context of a passive cross-trading exemption to permit managers to use indexes merely as a benchmark for the performance of a portfolio of a Model-Driven Fund. Accordingly, the Department has determined not to revise this definition.

Another comment related to both the definitions of ''Index Fund'' and ''Model-Driven Fund.'' The commenter noted that sections IV(a)(3) and IV(b)(2) of the proposal provide that each definition includes any investment fund, account or portfolio which either contains ''plan assets,'' is an investment company registered under the Investment Company Act of 1940, ''* * * or is an institutional investor.'' The comment noted that many index and model-driven funds are structured as common trust funds, limited liability companies, New Hampshire trusts or other forms of collective investment vehicles. Many of these funds do not contain ''plan assets'' subject to the Act, but are managed in the exact same manner as Funds that do contain ''plan assets.'' The commenter is concerned that the definitions of ''Index Fund'' and ''Model-Driven Fund'' will not include such funds unless the phrase ''* * * or is an institutional investor'' contained in sections IV(a)(3) and IV(b)(2) is modified to provide ''* * * or contains assets of one or more institutional investors.''

The Department concurs with the commenter's suggestion and, accordingly, has modified sections IV(a)(3) and IV(b)(2) of the final exemption.

12. *Definition of ''Triggering Event.''* Section IV(d) of the proposal defines the term ''triggering event'' by listing four specific ''events'' that are included within the definition. In this regard, the comments noted that the preamble to the proposal states that if a computer model used to create a portfolio for a Model-Driven Fund is designed to exclude particular securities for reasons specified by a plan client or the plan's investment guidelines, such exclusions would not be considered a separate triggering event. However, the comments noted that some of the Department's prior individual exemptions for cross-trading included, as a separate triggering event, the following:

''* * * a change in the composition or weighting of a portfolio used for a Model-Driven Fund which results from an independent fiduciary's decision to exclude certain stocks or types of stocks from the

Fund even though such stocks are part of the index used by the Fund.''[9]

The commenters requested that the Department modify the definition of ''triggering event'' to include a similar provision under the final exemption.

In response to the comments, the Department has added a fifth ''triggering event'' to section IV(d) of the exemption to incorporate the suggestion made by the commenters. Thus, section IV(d)(5) of the exemption includes within the definition of the term ''triggering event'' purchases and sales of securities made by Funds after changes to the portfolio of an Index or Model-Driven Fund solely as a result of an independent fiduciary's decision to exclude certain securities from the Fund.

In this regard, the Department notes that with respect to a Model-Driven Fund, if the exclusion of certain securities is ''built into'' the original design of the model, the operation of that model by the manager should not create additional cross-trade opportunities for the Fund, since the Fund was not designed to buy the specific securities which are excluded. Similarly, if an ''excluded security'' is added to an index which has been used by the model to create a portfolio for a Model-Driven Fund, the model should have been already programed to ''screen'' such securities from the acquisitions made by the Fund. Moreover, the additional triggering event would not apply with respect to any Index Fund or Model-Driven Fund that is a collective investment fund maintained by the manager, if the decision to exclude certain securities from the Fund's portfolio was made by the manager.

Lastly, the Department notes that the ''triggering event'' contained in section IV(d) would be effective on the date that the independent fiduciary directed the manager to exclude the securities from the Index or Model-Driven Fund, and, accordingly, the cross-trades of such securities would have to occur within three (3) business days, pursuant to the requirements of section II(b) of the exemption.

Another comment suggested a further modification to the definition of ''triggering event'' in the proposal. The commenter objected to the requirement in section IV(d)(2) of the proposal that a triggering event include a ''specific amount'' of net change in the overall level of assets in a Fund, as a result of investments and withdrawals, and the requirement in section IV(d)(3) of a ''specified amount'' of accumulated cash or stock in a Fund. The commenter suggested that the references to ''specific amount'' and ''specified amount'' be changed to ''material amount'' in both section IV(d)(2) and (3). In connection with this modification, the commenter also requested that a manager be allowed to either (i) identify such material amount in advance as a specified amount of net change (or accumulated cash or securities) relating to such Fund, or (ii) disclose, in the description of the manager's cross-trading practices, pursuant to section II(l) of the proposal, the parameters for determining a material amount of net change (or accumulated cash or stock), including any amount of discretion retained by the manager that may affect such net change (or accumulated cash or securities), in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given.

The Department has considered the commenter's suggestions for changes to the definition of ''triggering event,'' as contained in section IV(d)(2) and (3) of the proposal, and has determined that it would be appropriate to modify the final exemption. Thus, section IV(d)(2) and (3) of the exemption now reads as follows:

''(d) Triggering Event:

(2) A *material* amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) such *material* amount has either been *identified in advance as a specified amount of net change relating to such Fund and* disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund, *or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;* and * * *.'' [emphasis added]

(3) An accumulation in the Fund of a *material* amount of either:

(A) cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) stock attributable to dividends on portfolio securities; provided that such *material* amount has *either* been *identified in advance as a specified amount relating to such Fund and* disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, *or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given* * * * '' [emphasis added]

In connection with the modification noted above, the Department cautions managers that any parameters established for determining a material amount of net change (or accumulated cash or securities), and any discretion retained by the manager which may affect such amounts, must be sufficiently limited and described in enough detail to enable proper identification and monitoring of such triggering events by plan fiduciaries.

Further, with respect to the ''triggering events'' that must be disclosed to client plans, certain comments noted that section III(b)(2) of the proposal permits a manager, under certain circumstances, to refuse to disclose to clients any trade secrets, or commercial or financial information that is privileged or confidential, where such information is contained in the manager's record-keeping system. However, these comments noted that the proposal does not include a similar protection for privileged or confidential information included within the mandated client disclosures for triggering events. For example, the triggering event contained in section IV(d)(4) of the proposal (*i.e.,* a change in the model-prescribed portfolio solely by operation of the formulae contained in the computer model underlying the Fund) can only be utilized if certain disclosures are made to an independent fiduciary of each of the plans participating in the Model-Driven Fund. The comments stated that certain of these disclosures may involve highly proprietary information that the investment manager is reluctant to disclose to clients, particularly through a written communication that a client could easily transmit to others. Thus, the comments requested that the Department allow a manager to refuse to disclose trade secrets, or commercial or financial information that is privileged or confidential, so long as the manager notes the reason for non-disclosure in its general disclosure to clients.

In this regard, the Department does not believe that the disclosure of basic factors for making changes in a portfolio for a Model-Driven Fund would require that privileged or confidential information be revealed by the manager to independent plan fiduciaries. Therefore, the Department has not modified the language of section IV(d)(4) in the final exemption.

13. *Definition of ''Large Account.''* One comment noted that section IV(e) of the proposal excludes from the definition of ''Large Account'' any ''

[9] *See,* for example, condition (c)(2) of PTE 94–36 (59 FR 19249, April 22, 1994) regarding The Northern Trust Company.

* * * Index Fund or Model-Driven Fund sponsored, maintained, *trusteed* or managed by the Manager * * *'' [emphasis added] The commenter noted that some banks act as a directed trustee for group trusts which are managed by third party investment managers. In these situations, the bank acts as a non-discretionary trustee and its primary role is to provide custody and record-keeping services for the group trust. The commenter stated that there is no reason that an independent investment manager should be precluded from retaining the bank as a trading adviser for the liquidation or restructuring of the Large Account since, in its capacity as a non-discretionary trustee, the bank will not be making the underlying investment decisions for the portfolio restructuring of the Large Account. Therefore, the commenter requested that the word ''trusteed'' be deleted from the definition of ''Large Account'' in section IV(e) of the proposal.

In this regard, the Department does not believe that it would be appropriate to include all investment funds trusteed by the manager in the definition of ''Large Account'' contained in the exemption. However, the Department has determined it would be appropriate to modify the language of section IV(e) of the final exemption to include an Index Fund or a Model-Driven Fund for which the manager is a nondiscretionary trustee. Consequently, the Department has added a definition of the term ''nondiscretionary trustee'' to the exemption under section IV(m).

Other comments suggested that the definition of ''Large Account'' in section IV(e) of the proposal should be modified by deleting entirely the phrase which provides that a Large Account '' * * * is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed or managed by the Manager.'' These comments stated that, if the decision to liquidate a Fund's portfolio is made by an independent plan fiduciary, and such decision is entirely out of the manager's control, it should not matter whether the portfolio is an Index or Model-Driven Fund that is managed by the manager.

In response to these comments, the Department has determined that it would not be appropriate to make the requested modification to the definition of the term ''Large Account'' in section IV(e) of the exemption. The Department continues to believe that cross-trades by a manager's Index and Model-Driven Funds should be subject to the requirements and limitations applicable to Funds under the exemption, such as specified ''triggering events'' for cross-trade opportunities.

Another comment noted that section IV(e) of the proposal defines a ''Large Account'' as any investment fund, account or portfolio that, among other things, holds assets of a registered investment company other than an investment company advised or sponsored by the manager. The commenter believes that the limitation excluding investment companies advised or sponsored by the manager should be deleted. The commenter argued that the Large Account would not be participating in the manager's cross-trading program unless it were advised by the manager, and that the definition in the proposal excludes the very category of investment companies for which relief was intended.

The Department notes that the commenter's argument that a Large Account could be, and most likely would be, a registered investment company advised or sponsored by the manager is not consistent with the record upon which the exemption was developed by the Department. In this regard, the category of investment companies for which relief was intended under this exemption, as well as under prior individual exemptions, were those entities that are independent of the manager operating the cross-trading program, but who decide to hire the manager in order to carry out a specific portfolio restructuring program. In such instances, the restructured portfolio will often become an ''Index Fund'' or ''Model-Driven Fund'' (as defined herein) that will be managed by the manager.

However, the situation described by the commenter, which would permit the inclusion within a manager's cross-trading program for Large Accounts of ''actively-managed'' investment company portfolios advised by the manager, would expand the scope of the exemption beyond that intended by the Department. As discussed further below, the Department is not providing relief at this time for cross-trading programs involving ''actively-managed'' accounts or funds. Therefore, in response to this comment, the Department has determined not to modify section IV(e)(3) of the final exemption.

Other comments noted that the definition of ''Large Account'' in section IV(e) of the proposal requires that the plan or institutional investor whose assets are held by the Large Account have $50 million or more in total assets. The commenter suggested that the definition be revised to permit assets of affiliated plans maintained by the same employer, or controlled group of employers, to be aggregated for purposes of meeting the $50 million threshold.

In consideration of the commenter's suggestion, the Department has modified the definition of ''Large Account'' in section IV(e)(1) of the exemption to permit the aggregation of assets of employee benefit plans maintained by the same employer, or controlled group of employers, provided that such assets are pooled for investment purposes in a single master trust.

14. *Definition of ''Portfolio Restructuring Program.''* Several comments noted that the term ''portfolio restructuring program'' is defined in section IV(f) of the proposal to include the buying and selling of securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund ''managed by the Manager * * *'' In this regard, the comments noted that portfolio restructuring assignments occasionally contemplate that a manager will construct an Index Fund or Model-Driven Fund portfolio or some other type of portfolio which, once formed, will be managed on an ongoing basis by either the plan sponsor or an independent third party manager. In addition, the comments stated that since the terms ''Index Fund'' and ''Model-Driven Fund'' are already defined in the proposal, the phrase ''* * * managed by the Manager'' in the definition of ''portfolio restructuring program'' is unnecessary. Accordingly, the commenters suggested that the phrase ''managed by the Manager'' be deleted from the definition in section IV(f) of the final exemption.

In response to the comments, the Department has modified the definition of the term ''portfolio restructuring program'' in section IV(f) of the exemption to reads as follows:

> ''(f) Portfolio restructuring program—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager *or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager,* without regard to the requirements of * * * etc.'' [emphasis added]

15. *Volume Restrictions for Cross-Traded Securities.* A number of commenters responded to the Department's request for information on whether Index and Model-Driven Funds may hold a significant amount of the outstanding shares of a particular security, whether cross-trades of securities by a manager's Funds may represent a high percentage of the

outstanding daily trading volume for such securities, and whether some volume limitation for cross-traded securities would be appropriate. The commenters expressed the view that, even if a manager's Funds were cross-trading securities representing a high percentage of the average daily trading volume, there is no reason to impose a volume limitation in the exemption so long as the purchase or sale of such securities is mandated by a triggering event of an Index or Model-Driven Fund and the securities can be crossed at the closing market price, as established through an independent pricing source. These comments noted that such cross-trades are beneficial to plans regardless of whether the securities involved are thinly-traded, whether the Index and Model-Driven Funds hold significant amounts of the outstanding shares of the securities, or whether the manager's trading represents a high percentage of the trading volume for the securities. The commenters again noted the significant savings which are incurred by avoiding brokerage commissions and bid-ask spreads.

Thus, most commenters expressed the view that if a manager's Index and Model-Driven Funds have a bona fide need to buy or sell specific amounts of securities on any particular business day, in response to various triggering events, there should not be an arbitrary percentage limitation that would inhibit the manager from taking advantage of all cross-trade opportunities for such securities. However, another commenter expressed the view that the Department's exclusion of ''thinly-traded'' equity securities (by requiring in section II(f)(1) of the proposal that all cross-traded equity securities must be ''widely-held'' and ''actively-traded'') is unduly burdensome and unnecessary. As an alternative, this commenter recommended that the Department include ''thinly-traded'' equity securities, but impose some reasonable limitation on cross-trades of such securities, based on a comparison of the size of the cross-trade to the prior trading volume in the security over a reasonable period of time prior to the date of the transaction.

After considering the comments regarding the inclusion of ''thinly-traded'' equity securities in the exemption if an appropriate volume limitation is imposed, the Department has determined not to adopt this approach. The Department's decision is based, in part, on its understanding that, since a process-driven cross-trading program must allocate cross-trade opportunities in a mechanical fashion, it would not be economically feasible to override such allocations whenever the equity securities involved exceeded a specified volume limitation. Therefore, the Department continues to believe that it is more appropriate to allow cross-trades of all equity securities that are listed in an independently maintained third party index (*see* definition of ''Index'' in section IV(c) of the exemption), without any volume limitations. Under the exemption, the Department deemed all equity securities listed in an index to be ''widely-held'' and ''actively-traded'' for purposes of this exemption in order to allow the largest possible universe of equity securities to be cross-traded within the parameters of the conditions of the exemption. In the Department's view, the inclusion of ''thinly-traded'' equity securities that are not listed in an index would require additional safeguards, such as volume information and limitations, which may not be economically feasible in connection with the operation of a manager's cross-trading program.

16. *Avoidance of Adverse Market Impact; Savings in Transaction Costs; A Computer Model's Consideration of Liquidity.* In response to specific questions posed by the Department in the preamble to the proposal on the avoidance of market impact through cross-trades (*see* Section IV.B. of the preamble, 64 FR at 70063), several commenters noted that, by cross-trading at the close of market price, both sides of the cross-trade benefit by avoiding the potential for adverse market impact. The comments stated that adverse market impact occurs each time an investor trades through the market as the market price moves away from the offered price, meaning that the price decreases when the investor wants to sell and increases when the investor wants to buy.

One commenter stated that the Department appears to have concerns about the fact that a manager's avoidance of market impact may not be beneficial to plans at certain times. These concerns originate from the assumption that a manager could benefit certain plans by using a particular trade's market impact as an opportunity for obtaining a better price for a security on the open market. In this regard, the commenter noted that market impact is unpredictable and cannot be forecast by the manager. The commenter stated that managers believe that in most cases market impact is to be avoided, if possible. Thus, the commenter expressed the view that cross-trading, by avoiding the uncertainty of market impact, enables a manager to avoid the possibility of harm to certain clients which would result if trades were placed on the open market, and also eliminate transaction costs and custody costs.

Most commenters noted that a ''passive'' manager would have no incentive to use the limited amount of discretion allowed by its cross-trading program to favor one Fund or Account over another. One commenter stated that each manager would have the same trading goals for all Funds and Large Accounts—i.e., to maximize cross-trading and to minimize transaction costs for open market transactions.

Another commenter noted that Index and Model-Driven Funds are often buying and selling the same securities because there are many different Funds maintained by a manager that are tracking the same index (*e.g.,* the S&P 500 Index). Many managers also design portfolios for Model-Driven Funds that are based on the same index. Moreover, many large capitalization stocks are listed in more than one index. The commenters noted that cross-trades of such stocks between Index and Model-Driven Funds, pursuant to triggering events that occur without a manager's exercise of any investment discretion, at an objectively determined ''closing price'' as reported from a reputable third party source, are an efficient and effective way of meeting the investment objectives of plans which invest in such Funds.

In response, the Department recognizes the merits of cross-trading to reduce or eliminate transaction costs in the context of ''passively managed'' assets. In such instances, a manager has limited investment discretion as a result of independently determined triggering events.

With respect to the Department's concerns that the avoidance of market impact through cross-trades may not equally benefit both sides of such transactions, the Department notes that the potential for abuse appears to be significantly less with ''passively-managed'' assets than with ''actively-managed'' assets. However, the Department does not believe that the commenters have demonstrated that cross-trading creates market impact savings, if any, for both sides to any given cross-trade. The Department has been provided with data by one commenter demonstrating some market impact savings for one side in cross-trades of significant amounts of securities (*i.e.* market impact savings were measured where the cross-trades involved a large capitalization security traded in amounts averaging one and a quarter days of the average public trading volume of the security). No data

was provided to the Department measuring market impact savings for smaller cross-trades, nor was data provided measuring the market impact savings, if any, for each side in a particular cross-trade. Even so, as noted below, certain commenters have concluded that there has been significant transaction cost savings with cross-trading ''passively-managed'' assets and that these savings are attributable solely to the reduction or elimination of brokerage commissions and bid-ask spreads.

Another commenter noted that the preamble to the proposal suggests that relief would not be available under the exemption if the computer model used for a Fund considered the liquidity or availability of securities that are in the cross-trading ''network'' of Funds managed by the manager (*see* the sixth paragraph of Section IV.A. of the preamble, 64 FR at 70062). This commenter expressed the view that such a restriction is harmful to plans and misapprehends the operation of some ''passively-managed'' Funds. The commenter stated that truly ''passive'' Index Funds track the relevant indices and attempt to reduce or eliminate ''tracking error'' between the value of the Fund's portfolio vis-a-vis the value of the index's portfolio. The more identical an Index Fund's portfolio looks when compared to the underlying index's portfolio, and the cheaper the acquisition and disposition costs of the securities in the index, the lower the ''tracking error'' becomes. Thus, a successful ''passive'' manager is one who has the least amount of tracking error in its Index Funds. The commenter noted that the model used for such an Index Fund will always start with the proposition that the portfolio wants each security in the index in its precise capitalization-weighting, as determined by the index. The more information the model has about the costs of acquisition of any security, the less the tracking error will be for the Fund's portfolio and the more successful the manager will be in meeting the plan's investment objectives.

The Department's concerns regarding a computer model's consideration of liquidity or availability of certain securities that are in the manager's cross-trading ''network'' are best illustrated by the following example:

A computer model for a Model-Driven Fund identifies three possible securities for acquisition by the Fund in an attempt to achieve the optimal portfolio for the Fund within the specified guidelines dictated by the Fund's investors. These securities are identified, for purposes of this example, as ''A'', ''B'', and ''C''. Security ''A'' is the most liquid of the three securities, based on third party data, and security ''C'' is the least liquid. The model considers each security's liquidity factor, among other factors, and the estimated transaction costs which would be incurred to acquire the security, as part of its determination as to which security to buy and how much of the security to buy.

Assume that the model is programmed to make the selection of which security to buy, and the amount to buy, by considering only the liquidity information about each security that is available based on third party market data. Let's also assume that, based on such data, the model chooses security ''A'' and does not choose securities ''B'' or ''C''. The exemption would apply for acquisition of security ''A'' to be made by the Fund through cross-trades.

However, let's assume that the model is programmed to make the selection of which security to buy, and the amount to buy, by considering cross-trade opportunities that are available for each security, in addition to other liquidity information that is available based on third party data. Let's also assume that security ''C'' is available through a cross-trade and that the Fund can acquire all the securities it needs through cross-trades of that security. The model has been programmed to ''view'' security ''C'' as having ''infinite liquidity'' because the data within the control of the manager suggests that it can be acquired without incurring any transaction costs. However, this circumstance results from the fact that the necessary number of shares of security ''C'' which the model has determined that the Fund needs is available through cross-trades. Under this example, security ''C'' is considerably less liquid than security ''A'' based upon available third party data. The exemption would not apply for acquisitions of security ''C'' to be made by the Fund through cross-trades because the selection of security ''C'' was based upon the manager's own liquidity information at that time and not liquidity information based solely on third party data.

The Department believes that adoption of the commenter's liquidity approach could result in cross-trading opportunities within the control of the manager impacting upon the investment determinations of the Fund. In this regard, the Department notes that investment decisions made by a Fund may not be based in whole or in part by the manager on the availability of cross-trade opportunities and must be made prior to the identification and determination of any cross-trade opportunities, pursuant to the statement required under section II(j) of the exemption. Therefore, any model's consideration of information relating to cross-trade opportunities for particular securities, as part of the model's determination of which securities to buy or sell, how much of a security to buy or sell, or when to execute a sale or purchase of the securities for the Fund, would not be permitted under the exemption. The Department continues to believe that liquidity considerations and other factors considered by a computer model must be based on independent third party data, not within the control of the manager, as described under section IV(b) of the exemption.

Other commenters noted that the transaction cost savings attributable to cross-trades, pursuant to cross-trading programs operating under the Department's existing individual exemptions, are significant. In response to the Department's questions about whether such cost savings are attributable to the avoidance of market impact or only commission savings, one commenter stated that its clients have saved over $300 million annually through cross-trading and that this calculation is based entirely on the avoidance of brokerage commissions and bid-ask spreads. Another commenter stated that its clients saved approximately $282 million in the calendar year 1999, based on the total number of shares that were cross-traded during the year, broken down by the market in which each share would have been traded if it went to the open market. This commenter also confirmed that these savings are attributable to savings in brokerage commissions, bid-ask spreads and taxes, as applicable in each market. Thus, in both instances, the commenters noted significant cost savings even without taking into consideration whatever measurable ''savings'' may have been attributable to the avoidance of market impact.

17. *Effect of Class Exemption on Individual Exemptions; Appropriate Scope of Relief for the Exemption.* The commenters expressed many different points of view in response to the Department's invitation for comments on the effect that the continuation of current individual exemptions, for cross-trades by Index and Model-Driven Funds, would have in offering an advantage to those investment managers granted such relief compared to those managers which would utilize this exemption (*see* Section IV.H. of the preamble to the proposal, 64 FR at 70066).

One comment noted that the proposal would expand the relief for cross-trading beyond the relief currently available under the individual exemptions, particularly by permitting cross-trades of debt securities and by expanding the definitions of Funds and Large Accounts that are permitted to cross-trade. However, the comment also noted that the proposal imposes a number of additional disclosure, authorization and operational requirements on cross-trading programs. Thus, the comment stated that it is not

clear whether managers who continue to utilize their individual exemptions would have an advantage over those utilizing the class exemption.

Another comment stated that some individual exemptions have been relied upon by managers for more than a decade and that such exemptions should remain in place after the class exemption is granted. This commenter noted that managers have invested substantial time and resources in the current cross-trading systems, and other programmatic features in such systems have been developed in reliance upon the conditions of the individual exemptions. Any revocation of the existing exemptions would mandate conformance with the new exemption's requirements and features, and the manager's cross-trading procedures and systems would have to be significantly revised. The commenter stated that such revisions would place an undue burden on the managers, would add significant costs to the operation of the existing cross-trading programs, and would not provide any added benefits to the managers' client plans.

However, other commenters stated that, by permitting firms to continue to rely on individual exemptions that have, in some respects, less stringent conditions than the proposal, the Department would create a competitive advantage for advisers who already have exemptions. Some commenters further stated that, by granting the class exemption, the Department is already creating a competitive advantage for firms that ''passively manage'' plan assets over those which ''actively manage'' such assets. These commenters urged the Department to hold all firms to the same standard, at least with respect to the class exemption, and eliminate the existing individual exemptions to ensure an ''equal playing field'' for all similarly situated managers that ''passively-manage'' assets.

In this regard, the Department has not made a determination at the present time whether to revoke any past individual exemptions for cross-trading programs involving Index and Model-Driven Funds. It is not clear whether managers who continue to utilize their individual exemptions will have an advantage over those utilizing the class exemption since cross-trades may only be performed if they conform with either all of the provisions of an individual exemption or all of the provisions of the class exemption (*i.e.,* managers who hold individual exemptions may not pick and choose selected provisions from their own exemptions and the class exemption). As noted in the preamble to the proposal, prior to modifying or revoking any individual exemption, the Department must publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on any proposed revocation or modification of such exemptions.

Other commenters requested that the Department expand the proposal to permit cross-trades by ''actively-managed'' plan accounts of a manager. These commenters noted that the clear advantages of cross-trading should be available to both actively and passively managed funds, and that the Department's exclusion of ''actively-managed'' funds from the current exemption is unfair.

Other commenters stated that it was appropriate for the Department to handle cross-trades by ''passively-managed'' funds separately. Such commenters noted that ''passive'' managers have far less discretion than ''active'' managers. One comment stated that a class exemption attempting to address both ''actively'' and ''passively'' managed funds would be confusing and could lead to the application of unnecessarily burdensome conditions on ''passively-managed'' funds to address concerns applicable only to ''actively-managed'' funds.

The Department has determined to grant this exemption for cross-trading programs involving Index and Model-Driven Funds and to separately proceed with its consideration of relief for cross-trades by ''actively-managed'' plan accounts or pooled funds containing ''plan assets'' covered by the Act.[10] The Department acknowledges that appropriate cross-trades of securities by ''actively-managed'' accounts or funds would be beneficial to employee benefit plans in saving transaction costs and avoiding adverse market impact for both sides of the transactions. However, the Department believes that adequate safeguards must be developed in order to prevent abuses which could occur when an investment manager has significant investment discretion which could be used to benefit certain clients or the manager itself at the expense of its ERISA-covered accounts.

The Department is currently considering what conditions may be necessary to address potential abuses in cross-trading programs that would involve ''actively-managed'' plan accounts. The Department continues to receive and review additional information from various interested persons which will assist the Department in developing a separate class exemption for cross-trades by ''actively-managed'' plan accounts.

Description of the Exemption

A. Scope and General Rule

The exemption consists of four parts. Section I sets forth the general exemption and describes the transactions covered by the exemption. Sections II and III contain specific and general conditions applicable to transactions described in section I. Section IV contains definitions for certain terms used in the exemption.

The exemption set forth in section I provides relief from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of ERISA and section 8477(c)(2)(B) of FERSA for: (a) The purchase and sale of securities between an Index or Model-Driven Fund and another such Fund, at least one of which holds ''plan assets'' subject to the Act; and (b) the purchase and sale of securities between such Funds and certain large accounts (Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts. The exemption also would apply to cross-trades between two or more Large Accounts if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts pursuant to which securities are cross-traded solely as a result of the objective operation of the program.

The exemption under section I(a) applies to cross-trades of securities among Index or Model-Driven Funds managed by the same investment manager where both Funds contain plan assets. However, as stated above, a violation of section 406(b)(2) occurs when an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an entity which contains plan assets. As a result, the exemption is also applicable to situations where the investment manager has investment discretion for both Funds involved in a cross-trade but one Fund does not contain plan assets

[10] Interested persons may wish to review the information received by the Department in response to the Notice published in the **Federal Register** on March 20, 1998 (63 FR 13696) and in the testimony provided at the public hearing on cross-trades of securities by ''actively-managed'' plan accounts and pooled funds (the Hearing), which was held at the Department on February 10 and 11, 2000. Copies of the comments received by the Department in response to the Notice, and the testimony received at the Hearing, are available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210. For copies of the comments relating to the Notice, interested persons should request File No. M–9043. For copies of the testimony received at the Hearing, interested persons should request File No. D–10851 (Cross-Trades of Securities Hearing).

because, for example, it is registered as an investment company under the Investment Company Act of 1940 (*e.g.,* a mutual fund). Any mutual fund or other institutional investor covered by the exemption under section I(a) must meet the definition of an Index Fund or a Model-Driven Fund, contained in section IV(a) and (b). Institutional investors which meet the definitions contained in section IV(a) and (b) may include, but are not limited to, entities such as insurance company separate accounts or general accounts, governmental plans, university endowment funds, charitable foundation funds, trusts or other funds exempt from taxation under section 501(a) of the Code.

The exemption under section I(b) applies to the purchase and sale of securities between a Fund and a Large Account, at least one of which holds ''plan assets'' subject to ERISA or FERSA, pursuant to portfolio restructuring programs initiated on behalf of certain Large Accounts. The term ''Large Account'' is defined in section IV(e) to include certain large employee benefit plans or other large institutional investors with at least $50 million in total assets, including certain insurance company separate and general accounts and registered investment companies. For purposes of the $50 million requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated, provided that such assets are pooled for investment purposes in a single master trust. A portfolio restructuring program, as defined in section IV(f), involves the buying and selling of securities on behalf of a Large Account in order to produce a portfolio of securities which either becomes an Index Fund or a Model-Driven Fund or resembles such a Fund, or to carry out a liquidation of a specified portfolio of securities for a Large Account. The Fund or other portfolio resulting from the restructuring program will be either managed by the manager of the Fund or by an investment manager that is independent of the Fund manager. The definition of a Large Account requires that an independent fiduciary authorize a Fund manager (*i.e.,* a Manager, as defined in section IV(i)) to restructure all or part of the portfolio or to act as a ''trading adviser'' as defined in section IV(g) with respect to the restructuring of such portfolio. The trading adviser's role is limited under the exemption to the disposition within a stated period of time of a securities portfolio of a Large Account and/or the creation of the required portfolio.

Under this definition, the manager may not have any discretionary authority for any asset allocation, restructuring or liquidation decisions or otherwise provide investment advice with respect to such transactions. In this regard, the Department notes that it expects the investment manager to comply with the applicable securities laws in connection with any portfolio restructuring program.

Section IV(a) and (b) require that the Index or Model-Driven Fund be based upon an index which represents the investment performance of a specific segment of the public market for equity or debt securities. Section IV(c) requires that the index be established and maintained by an independent organization which is: in the business of providing financial information or brokerage services to institutional clients; a publisher of financial news or information; or a public stock exchange or association of securities dealers. The index must be a standardized index of securities which is not specifically tailored for the use of the Fund manager.

Section IV(a) and (b) specifically define Index and Model-Driven Funds for purposes of the exemption. These definitions are designed to limit the amount of discretion the manager can exercise to affect the identity or amount of securities to be purchased or sold and to assure that the purchase or sale of any security is not part of an arrangement, agreement or understanding designed to benefit the manager. Under the definition of ''Index Fund'' contained in section IV(a), the investment manager must track the rate of return of an independently maintained securities index by either replicating the same combination of securities which compose such index or by investing in a representative sample of such portfolio based on objective criteria and data designed to recreate the projected return, risk profile and other characteristics of the index. Under the definition of ''Model-Driven Fund'' contained in section IV(b), trading decisions are passive or process-driven since the identity and the amount of the securities contained in the Fund must be selected by a computer model. Although the manager can use its discretion to design the computer model, the model must be based on prescribed objective criteria using third party data, not within the control of the manager, to transform an independently maintained index. Thus, for example, no exemptive relief would be available if the manager designed the computer model to consider the liquidity or the availability of a security based on information that was solely within the control of the manager. In such instances, the computer model would be considering data that was not from a third party source, and that was within the control of the manager.

B. Price and Securities

Section II(a) of the exemption requires that each cross-trade be executed at the closing price for that security. In addition, section II(g) of the exemption requires that the manager may not receive any brokerage fees or commissions as a result of the cross-trades.

Closing price is defined in section IV(h) as the price for the security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market. The procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined. The pricing source must be independent of the manager and must be engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and must be widely recognized as an accurate and reliable source for such information. In this regard, some managers may use one pricing service for pricing domestic securities and another pricing service for pricing foreign securities. With respect to foreign securities, the applicable independent pricing source should provide the price in local currency rates and, if that currency is other than U.S. dollars, may also provide the U.S. dollar exchange rate. Thus, securities must be cross-traded in all cases at the closing prices received by the manager from the relevant independent pricing source.

The Department has adopted this definition of the term ''closing price'' in an effort to be consistent with the methods for determining the price of cross-traded securities currently utilized by Index and Model-Driven Fund investment managers, according to both the comments received in response to the proposal published on December 15, 1999 and the comments received in response to the Notice published on March 20, 1998. In addition, the Department believes that this pricing approach will ensure that the pricing procedures utilized are objective and not subject to the discretion or

manipulation of any of the involved parties.

Section II(f) of the exemption requires that cross-trades of either equity securities or fixed income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. Section II(f)(1) further requires that cross-trades of equity securities only involve securities which are widely-held and actively-traded. In this regard, the Department notes that equity securities will be deemed to be ''widely-held'' and ''actively-traded'' under this exemption if such securities are included in an independently maintained index, as defined in section IV(c) herein. The Department expects that managers, in making their determinations regarding the types of securities included within the scope of this condition, would consider information about the average daily trading volume for equities traded on any recognized securities exchange or automated broker-dealer quotation system which would be readily available from independent pricing sources or other independent sources which publish financial news and information.

C. Triggering Events

Section II(b) of the exemption requires that any purchase or sale of securities by a Fund in a cross-trade with another Fund or with a Large Account occur as a direct result of a ''triggering event,'' as defined in section IV(d), and that such cross-trade be executed no later than the close of the third business day following such ''triggering event.'' The Department believes that trading pursuant to triggering events limits the discretion of the manager to affect the identity or amount of securities to be purchased or sold. Triggering events, as defined in section IV(d), are outside the control of the manager and will ''automatically'' cause the buy or sell decision to occur.

Triggering events are defined in section IV(d) as:

(1) A change in the composition or weighting of the index underlying the Fund by the independent organization creating and maintaining the index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities;

provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

The first three triggering events have been adopted based upon those triggering events utilized in prior individual exemptions, with an additional requirement in the second and third triggering events for the amounts involved, or the parameters for determining such amounts, to be specified and disclosed to independent fiduciaries of plans investing in the Funds. In addition, the fourth triggering event has been added in order to clarify that a triggering event also occurs as a result of a change in the composition of a Fund's portfolio mandated solely by operation of the computer model underlying the Fund. For example, if a model contained a formula for a Fund requiring only stocks with a certain price/earnings ratio and some of the originally prescribed stocks now were above the specified tolerances of the formula relating to that model, a triggering event would occur requiring that those stocks be sold by the Fund. The Department has included this triggering event under this exemption in order to clarify that Model-Driven Funds may need to buy or sell securities to conform to changes to the portfolio prescribed by the model that differ from changes to a portfolio necessitated as a result of changes to the underlying index. The exemption does not require that a computer model be operated according to any fixed frequency. However, the Department is of the view that the exemption would not be available unless the formulae contained in the computer model underlying a Fund were operated by the manager on an objective basis rather than being used for the purpose of creating cross-trade opportunities in response to the needs of other Funds or certain Large Accounts.

The Department further notes that under section II(k), disclosures must be made to independent plan fiduciaries of the affected Funds regarding the triggering events that would create cross-trading opportunities for such Funds under the manager's cross-trading program. Under the model-driven triggering event contained in the exemption, the basic factors for making changes in the composition of the

portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model must be included in these disclosures.

The Department notes that a fifth triggering event has been added to the final exemption, based on comments received, which permits plan sponsors to direct the manager to delete certain securities from an Index or Model-Driven Fund where the Fund otherwise would hold such securities based upon the particular index or computer model. The Department understands that this triggering event is consistent with practices utilized by certain managers in prior individual exemptions and will facilitate additional cross-trade opportunities.

D. Modifications to the Computer Model

Section II(c) requires that, if the model or the computer program used to generate the model underlying the Fund is changed by the manager, no cross-trades of any securities can be engaged in pursuant to the exemption for three (3) business days following the change. This restriction recognizes the authority of the manager to change assumptions involving computer models after the model's activation.

The Department notes that the three (3) business day ''blackout'' period for cross-trades by a Fund after any change made by the manager to the model underlying the Fund is intended to prevent model changes which might be made by managers, in part, to deliberately create additional cross-trading activity.

In addition, under section IV(b), a computer model for a Model-Driven Fund must use independent third party data, not within the control of the manager, to transform an index.

E. Allocation of Cross-Trade Opportunities

The Department notes that frequently the amount of a security which all of the Funds need to buy may be less than the amount of such security which all of the Funds will need to sell, or vice versa. Thus, section II(d) of the exemption requires that all cross-trade opportunities be allocated by the manager among potential buyers, or sellers, on an objective basis. Under section II(d), this basis for allocation must have been previously disclosed to independent fiduciaries on behalf of each plan investor, and must not permit the exercise of any discretion by the manager. In previous individual exemptions, applicants have relied on different systems (*e.g.* pro rata or queue) to objectively allocate cross-trade opportunities. While it appears to the Department that a pro rata basis of allocation would be the method least subject to scrutiny, the Department recognizes the validity of other workable objective systems. However, the Department cautions that such systems may not permit the exercise of discretion by the manager.

F. Requirements for Cross-Trades by a Manager Plan

Section II(e) of the exemption requires that no more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade may be comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion. In this regard, the Department wishes to note that this percentage limitation would not apply to any Manager Plan(s) for which the Manager does not exercise investment discretion. For example, a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options would not be subject to the twenty (20) percent limit.

G. Disclosures and Authorizations

Section II(h) of the exemption requires that a plan's participation in a cross-trade program of a manager involving Index and Model-Driven Funds at least one of which holds ''plan assets'' subject to the Act will be subject to the prior written authorization of a plan fiduciary who is independent of the manager. However, for purposes of this exemption, the requirement that the authorizing fiduciary be independent of the manager shall not apply in the case of a Manager Plan. In this regard, section II(e) of the exemption requires that no more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade may be comprised of assets of a Manager Plan for which the Manager exercises investment discretion.

The authorization described in section II(h), once given, would apply to all Funds that comprise the manager's cross-trading program at the time of the authorization. Thus, a new authorization by an independent plan fiduciary for investment in a different Fund, in which the plan did not invest at the time of its initial written authorization, would not be necessary to the extent that such Fund was part of the program at the time of the original authorization. However, where a manager makes new Funds available for plan investors or changes triggering events relating to Funds subject to the initial authorization, and such Funds or triggering events were not previously disclosed as being part of the manager's cross-trading program, section II(k) of the exemption requires that the manager furnish additional disclosures to an independent plan fiduciary. The Manager shall provide a notice to each relevant independent plan fiduciary of plans invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

As noted below, section II(l) requires that disclosures be made to the relevant independent plan fiduciaries regarding each Fund in which the plan is invested as part of the notice required for a plan's annual re-authorization of its participation in the manager's cross-trading program. In addition, section II(l) requires that disclosures regarding any new Funds, or new triggering events in any existing Funds, in which a plan is not invested be made available, upon request, as part of the notice required for a plan's annual re-authorization of its participation in the manager's cross-trading program.

Section II(i) clarifies the meaning of Section II(h) with respect to existing plan investors in any of the Funds, which hold plan assets subject to the Act, prior to a manager's implementation of a cross-trading program. Under section II(i), the authorizing independent fiduciary must be furnished notice and an opportunity to object to that plan's participation in the program not less than forty-five (45) days prior to the implementation of the cross-trade program. Section II(i) further states that the failure of the authorizing fiduciary to return a special termination form provided in the notice by a specified date that is at least thirty (30) days from receipt shall be deemed to be approval of the plan's participation in the program. If the authorizing plan fiduciary objects to the plan's inclusion in the program, the plan will be given the opportunity to withdraw without penalty prior to the program's implementation.

Sections II(j) and II(k) describe the type of information that is required to be disclosed to a plan fiduciary prior to the authorization defined in sections II(h)

and II(i). Important among these disclosures is a statement describing the conflicts that will exist as a result of the manager's cross-trading activities. This statement must also detail and explain how the manager's practices and procedures will mitigate such conflicts. Such writing must include a statement that:

Investment decisions will not be based in whole or in part by the manager on the availability of cross-trade opportunities. These investment decisions include:

- Which securities to buy or sell;
- How much of each security to buy or sell; and,
- When to execute a sale or purchase of each security.

Investment decisions will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon triggering events set forth in the exemption. Records documenting each cross-trade transaction will be retained by the manager.

Section II(l) further requires that notice be provided to the authorizing plan fiduciary at least annually of the plan's right to terminate its participation in the cross-trading program and its investment in any of the Funds without penalty. Such notice must be accompanied by a special termination form. Failure to return the form by a specified date that is at least thirty (30) days from the receipt will be deemed approval of the plan's continued participation in the cross-trading program. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization will provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or any new ''triggering events'' (as defined in Section IV(d) below) that may have been added to existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h), or the time of the notice described in Section II(i).

Section II(m) of the exemption details specific requirements for cross-trades of securities which will occur in connection with a Large Account restructuring. In particular, section II(m)(2) requires that the authorization for such cross-trades must be made in writing prior to the cross-trade transactions by fiduciaries of the Large Account who are independent of the manager (except in the case of a Manager Plan). Such authorization must follow full written disclosure of information regarding the cross-trading program. Such authorization may be terminated at will upon receipt by the manager of written notice of termination. A termination form must be supplied to the Large Account fiduciary concurrent with the written description of the cross-trading program. Under section II(m)(3), the portfolio restructuring program must be completed within sixty (60) days of the initial authorization made by the Large Account's fiduciary (or initial receipt of assets associated with the restructuring, if later), unless the Large Account's fiduciary agrees in writing to extend this period for another thirty (30) days. Large Account fiduciaries may utilize the termination form or any other written instrument at any time within the 60-day period, or the additional 30-day period, to terminate their prior written authorization for cross-trading related to the portfolio restructuring program. Under section II(m)(4), within thirty (30) days of the completion of the restructuring program, the Large Account fiduciary must be fully apprised in writing of the results of the transactions. Such writing may include, upon request by the Large Account fiduciary, additional information sufficient to allow the independent fiduciary for the Large Account to verify the need for each cross-trade and the determination of the above decisions. However, pursuant to section III(b)(2) the manager may refuse to disclose to a Large Account fiduciary or other person any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person, provided that by the close of the thirtieth (30th) day following the request, the manager gives a written notice to such person advising that person both the reasons for the refusal and that the Department may request such information.

H. Recordkeeping

Section III(a) requires that the manager maintain records necessary to allow a determination of whether the conditions of the exemption have been met. These records must be maintained for a period of six (6) years from the date of the transactions. These records must include records which identify the following:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) which securities to buy or sell; (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades were associated with triggering events.

As explained to the Department, the triggering event relating to net investments in, or withdrawals from, a Fund results in new cash to invest in the Fund or the need to liquidate securities from a Fund. The model or index underlying the Fund determines which securities to purchase or sell based on the amount of net investments or withdrawals. This process results in the creation of a trade list or a model prescribed output of securities to be purchased or sold. The manager then applies its objective allocation system to the trade lists or model prescribed outputs used for other Funds participating in the cross-trade program to determine which particular cross-trades will occur between Funds. For those securities which cannot be cross-traded after application of the manager's allocation system, the necessary purchases and sales are made through other means.

In the view of the Department, records must be maintained of this cross-trading activity with enough specificity to allow an independent plan fiduciary to verify whether the safeguards of this exemption have been met. Section II(b) requires that any cross-trade of securities by a Fund occur as a direct result of a ''triggering event'' as defined in section IV(d) and is executed no later than the close of the third business day following such ''triggering event.'' Among the records needed to verify that this condition has been satisfied, section III(a)(1) requires that, on a Fund by Fund basis, the manager maintain a record of the specific triggering events which result in the creation of the list of specific securities for the manager's cross-trading system. Section III(a)(2) further requires that, on a Fund by Fund basis, the manager maintain records of

the model prescribed output or trade list, as well as the procedures utilized by the manager to determine which securities to buy or sell and how much of each security to buy or sell, in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events. As provided by section III(b)(2), if such material is viewed as a trade secret, or privileged or confidential, the manager may refuse to disclose such information if reasons for the refusal are given and the person is also notified that the Department of Labor may request such information.

This record-keeping requirement is intended to assure that independent plan fiduciaries will be able to determine whether Funds and their underlying models or indexes operate consistently in following the input of triggering event information. The Department does not intend to prescribe a detailed list of records that are necessary to enable a determination of compliance with the exemption because the necessary records will depend on the nature of the Index or Model-Driven Funds involved and other factors. This information, however, should be kept in sufficient detail to enable a replication of specific historical events in order to satisfy an inquiry by persons identified in section III(b)(1). Section III(a)(3) requires that, on a Fund by Fund basis, records be maintained of the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Further, Section III(a) requires that the records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified in section III(b)(1), may obtain them within a reasonable time. This requirement should permit the records to be retrieved and assembled quickly, regardless of the location in which they are maintained. For those records which are not maintained electronically, the records should be maintained in a central location to facilitate assembly and examination.

All records must be unconditionally available at their customary location for examination during normal business hours by the persons described in section III(b)(1). However, as noted with respect to information which may be disclosed to a Large Account fiduciary or other person, the manager may refuse to disclose to a person, other than a duly authorized employee or representative of the Department or the Internal Revenue Service, any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person. In such instances, the manager shall provide, by the close of the thirtieth (30th) day following the request, a written notice to such person advising that person of the reasons for the refusal and that the Department may request such information.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is applicable to a particular transaction only if the conditions specified in the class exemption are met; and

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I—Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

Effective April 15, 2002, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Sections II and III below are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund (a ''Fund''), as defined in Sections IV(a) and (b) below, and another Fund, at least one of which holds ''plan assets'' subject to the Act or FERSA; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) below, at least one of which holds ''plan assets'' subject to the Act or FERSA, pursuant to a portfolio restructuring program, as defined in Section IV(f) below, of the Large Account;

Notwithstanding the foregoing, this exemption shall apply to cross-trades between two or more Large Accounts pursuant to a portfolio restructuring program if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely as a result of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined in Section IV(h) below.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d) below, and is executed no later than the close of the third business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (*e.g.,* a pro rata allocation system).

(e) No more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade is

comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms ''widely-held'' and ''actively-traded'' shall be deemed to include any security listed in an Index, as defined in Section IV(c) below; and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions as a result of the cross-trade.

(h) As of the date this exemption is granted, a plan's participation in the Manager's cross-trading program as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of the plan which is independent of the Manager engaging in the cross-trade transactions. For purposes of this exemption, the requirement that the authorizing fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days prior to the implementation of the cross-trading program, that describes the Fund's participation in the Manager's cross-trading program, provided that:

(1) Such notice allows each plan an opportunity to object to the plan's participation in the cross-trading program as a Fund investor by providing the plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager by a specified date (which shall be at least 30 days following the plan's receipt of the form) shall be deemed to be an approval by the plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to the plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, the plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty prior to the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h), and in the notice described in Section II(i), the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' set forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Prior to any authorization set forth in Section II(h), and at the time of any notice described in Section II(i) above, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the manager to price the cross-traded securities, and the methods that will be used for determining closing price), and any other reasonably available information regarding the matter that the authorizing fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in section II(h) or section II(i), the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following the plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or

any new triggering events (as defined in Section IV(d) below) that may have been added to any existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h), or the time of the notice described in Section II(i).

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) below, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) below, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager (other than in the case of any assets of a Manager Plan) [11] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k), and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

(A) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(B) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days following the completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a), subject to the limitations described in Section III(b). However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III—General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, including records which identify:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; and (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of the Plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any Plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If in the course of seeking to inspect records maintained by a Manager pursuant to this exemption, any person described in paragraph (b)(1)(B) through (D) seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described in paragraph (b)(1)(B) through (D) shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV—Definitions

The following definitions apply for purposes of this exemption:

(a) *Index Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or

[11] However, proper disclosures must be made to, and written authorization must be made by, an appropriate fiduciary for the Manager Plan in order for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account.

(ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(b) *Model-Driven Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) below;

(2) Which either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(c) *Index*—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public securities exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) below; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) *Triggering Event*:

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) *Large Account*—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed (other than a Fund for which the Manager is a nondiscretionary trustee) or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund

which is exempt from taxation under section 501(a) of the Code; or

(3) An investment company registered under the Investment Company Act of 1940 (e.g., a mutual fund) other than an investment company advised or sponsored by the Manager;

provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) below) in connection with a portfolio restructuring program (as defined in Section IV(f)) for the Large Account.

(f) *Portfolio restructuring program*—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2), or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) *Trading adviser*—A person whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The person does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to such transactions.

(h) *Closing price*—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) *Manager*—A person who is:

(1) A bank or trust company, or any Affiliate thereof, as defined in Section IV(j) below, which is supervised by a state or federal agency; or,

(2) An investment adviser or any Affiliate thereof, as defined in Section IV(j) below, which is registered under the Investment Advisers Act of 1940.

(j) *Affiliate*—An ''affiliate'' of a Manager includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(k) *Control*—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) *Relative*—A ''relative'' is a person that is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(m) *Nondiscretionary trustee*—A plan trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, DC, this 6th day of February, 2002.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

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Part III

Department of Labor

Pension and Welfare Benefits Administration

Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–12; Application No. D–10851]

Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA), the Federal Employees' Retirement System Act (FERSA), and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by investment managers, and among such Funds and certain large accounts which engage such managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. The exemption affects participants and beneficiaries of employee benefit plans whose assets are invested in Index or Model-Driven Funds, large pension plans and other large accounts involved in portfolio restructuring programs, as well as the Funds and their investment managers. This exemption does not address cross-trades of securities among ''actively-managed'' accounts. The Department is considering additional safeguards to protect participants in plans that engage in active cross-trading prior to publishing a proposal to permit such cross-trades.

EFFECTIVE DATE: The effective date of the exemption is April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd or Christopher J. Motta of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 693–8540; or Michael Schloss, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, at (202) 693–5600. (These are not toll-free numbers.)

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520)(PRA 95), the Department submitted the information collection request (ICR) included in the Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of proposed class exemption was published in the **Federal Register** (December 15, 1999, 64 FR 70057). OMB subsequently approved the ICR under OMB control number 1210–0115. The approval will expire on April 30, 2003. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number.

As described in detail in the **SUPPLEMENTARY INFORMATION** section which follows, the Department of Labor (Department) has made certain modifications to the terms of the proposed class exemption in response to comments received from the public. Although the recordkeeping and information disclosure requirements which constitute the information collection provisions of the final class exemption have been clarified in certain respects, the information collection provisions have not been substantively or materially changed from the proposed exemption. The Department has, however, made certain adjustments to its burden estimates and underlying assumptions in response to comments on the proposal. These adjustments relate to the numbers of entities offering Index and Model-Driven Funds and their client plans, and the number of Large Accounts that may make use of the exemption, and the estimated burden of the record-keeping requirement.

The Department's original estimates of the number of users of the exemption were based on the number of individual exemptions granted and applications received, and information received from exemption applicants about the number of plans involved, resulting in estimates of 10 entities with an average of 20 client plans for each. One commenter expressed the view that at least 50 entities with an average of 40 client plans would make use of the exemption. Because the Department acknowledges that the grant of this final exemption may affect the number of entities that would consider implementing a program of cross trading involving index and model funds, the assumed numbers of entities and plans have been increased for purposes of burden estimates to 20 entities and 40 plans, respectively. Similarly, the number of Large Accounts assumed for purposes of estimating burden has been increased from 10 to 40. While the assumed number of Large Accounts is smaller than the 1,000 offered by the commenter, the Department believes that a number approximating 18% of all plans with $50 million in assets would substantially overstate the number likely to make use of the exemption in connection with a portfolio restructuring program in a given year.

The commenter also indicated that the Department's estimates of the time required to establish and maintain the record-keeping systems that would be needed to comply with the exemption were significantly low. The comment states that a significant investment of $4 to $5 million would be required for each user to establish the necessary record-keeping systems, and that substantial amounts of time would be required daily for ongoing record-keeping, and annually for ongoing disclosures. Upon consideration of the comment, the Department has concluded that its original estimates did omit the impact of the initial investment of resources that would be required to enhance existing software and systems to track cross-trades to triggering events. As a result, the Department has revised its estimates to include the hours, or costs as applicable, of 1,040 hours of systems analyst time at $51 per hour (based on Occupational Employment Survey data and 1999 Employment Cost Index, adjusted for non-wage compensation and overhead.) This change adds approximately 12,500 hours and $424,000 to the estimated burden of the final exemption. These totals are distributed over a three year period for purposes of the annual burden shown below.

Given that record-keeping systems for securities transactions are primarily electronic in nature, and that the Department's burden estimates now take into account the start-up cost of modifying automated record-keeping systems, the Department has decided not to revise the estimated time required to maintain the required records of trades and to prepare disclosure materials. In the Department's view, the original estimates are reasonable in light of the degree to which record-keeping is automated, the industry's existing record-keeping practices involving cross-trading, and the information provided by other commenters.

In addition, the final exemption clarifies that the annual disclosures are required to be made with respect to only those Funds that hold plan assets and in which a given plan invests. The commenter had indicated that eliminating the annual disclosure requirement with respect to Funds in which a plan had no investments would substantially reduce the burden. This clarification, therefore, further supports retention of the original assumptions.

Finally, the commenter expressed the view that certain of the information required to be disclosed by the terms of the proposed exemption was duplicative and unnecessary. As noted earlier, with the exception of certain clarifications, the information collection provisions of the final exemption are unchanged from the proposal. The Department's basis for its conclusions with respect to the need for the disclosure and record-keeping provisions of the final exemption are discussed in detail in the **SUPPLEMENTARY INFORMATION** section that follows.

The burden estimates that result from the revised assumptions are presented below:

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Affected Entities: Business or other for-profit.

Respondents: 60 (20 entities and 40 Large Accounts).

Responses: 840.

Annual Hour Burden: $9,100.

Annualized Capital/Start-up Cost: $141,000.

Annual Cost (Operating and Maintenance): $280,000.

Annual Cost Burden: $421,000.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising 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 the Executive Order, it was determined that this action is ''significant'' under section 3(f)(1) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Economic Analysis

Establishing a class exemption that permits plans to cross-trade can be expected to have a variety of positive economic effects that will considerably exceed the direct costs incurred by plans to comply with the record keeping and reporting requirements enumerated in the PRA section of the final class exemption. By removing existing barriers to these types of transactions, the exemption will significantly increase the utilization of cross-trading among index and model-driven portfolios. This will result in substantial savings to plans by lowering the transaction costs in a number of ways. Although there is currently no source of data that can be used to precisely estimate the level of these savings or the distribution of these effects among various parties, extrapolating from several sources can provide a reasonable estimate of their overall magnitude.

Limiting the exemption to index and model-driven portfolio management techniques should preclude any changes in the incidence of trading activity. In contrast to active management techniques, index and model funds will continue to execute trades at the same levels that they would in the absence of the exemption because their trading is motivated by the need to remain within their tracking parameters rather than in response to marginal changes in expected transaction costs. It is therefore reasonable to assume that the changes in costs will result solely from a decrease in the cost of executing many individual trades rather than from a change in the levels of trades.

Changes in the costs of individual trades will result from (1) the elimination of commission costs that would otherwise be associated with a trade, (2) the avoidance of bid-ask spreads that impose costs for transactions executed through dealers, (3) the absence of fees and taxes that might otherwise apply, and (4) the avoidance of the market impact of large trades which might otherwise require price concessions to execute or effect the trade which would directly impact the market value of the resulting holdings.

Only the first three of these effects are considered in the analysis. The last, market impact, is not included because it can reasonably be expected to have largely offsetting effects. ERISA plans are equally likely to be on either side of a cross trade and in most cases are likely to represent both parties to a transaction. In some instances, they will be advantaged by avoiding the changes in an individual securities price that might otherwise have resulted from a trade executed through another venue. In other circumstances, they will be disadvantaged. An equal probability of either will result in essentially offsetting effects in the aggregate.

A similarly conservative approach is taken in regard to two other aspects of the analysis. These are a result of the limitations in the available data and the absence of any experience with the full scope of relief afforded by the exemption on which to base an estimate. Although some data on the amount of ERISA plan assets in index funds is available, there is no similar source of reliable information to estimate the size of ERISA model driven assets to which the exemption would apply. There is also no experience with more extensive opportunities for cross-trading that are available under the exemption resulting from increased flexibility in allocating cross-trading opportunities, the extension of relief to a broader range of entities, and the inclusion of debt securities in the allowable transactions. Consequently the analysis is limited to index funds and does not incorporate increases in savings resulting from the extension of relief to circumstances with which there is no prior experience. As such, it should be interpreted as an extremely conservative estimate that is likely to represent a lower bound of the level of savings that can be expected to accrue to plans.

Two large financial services firms currently operating under individual exemptions that permit cross-trading among ERISA plans provided estimates of the savings in commissions, spreads, and fees that they have experienced managing both ERISA and non-ERISA indexed assets. These two estimates represent a significant portion of the ERISA plan universe and are therefore likely to be representative of the cost savings likely to occur. One of the firms estimated the cost savings to be approximately $275 million per year for a total indexed portfolio of $400 billion. The other estimated a savings of $207 million for $441 billion of indexed assets under management. Both of these include ERISA and non-ERISA assets, however, the experience should be indicative of expected results because the nature of trading costs for indexed funds should be virtually identical. Averaging these figures yields an estimate that costs savings of .057% or 5.7 basis points for each dollar of affected ERISA plan assets can be expected.

A recent survey of pension funds indicates that among the largest private sector defined benefit pension funds, 14% of the total assets were held in index funds. Among defined contribution plans, index funds constituted 12% of total assets. Applying these percentages to the most recent estimates of the total value of private pension funds yields an estimate of approximately $584 billion of ERISA pension funds that are currently managed as indexed funds.

Applying the estimate of $.00057 of savings for each dollar of assets under management results in an estimated level of cost reductions of approximately $332 million per year that will result from the class exemption. This total cost savings estimate overlaps, in part, current costs savings experienced by plans whose managers have cross-trading programs covered under existing individual exemptions. While certain large index fund managers are successfully operating cross-trading programs for ERISA plans at this time, the class exemption is expected to create additional cost savings for these plans by increasing the number and frequency of cross-trading opportunities among the managers' client accounts. In addition, new cross-trading opportunities will be made available for plans whose assets are managed by entities that currently do not have individual exemptions. Finally, the conservative nature of the total estimate is highlighted by the fact that cost savings associated with cross-trading by model-driven funds have not been factored into the estimate of total cost savings due to the absence of available data.

SUPPLEMENTARY INFORMATION: On December 15, 1999, the Department of Labor (the Department) published a notice in the **Federal Register** (64 FR 70057) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA,[1] and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).[2] The Department's determination to proceed with the proposed class exemption was based, in part, on information received from interested persons in response to a notice (the Notice) published in the **Federal Register** on March 20, 1998 (63 FR 13696).

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. Fourteen (14) public comments were received by the Department. Upon consideration of all the comments received, the Department has determined to grant the proposed class exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of Comments Received

The comments received by the Department were generally supportive of the issuance of a separate class exemption for cross-trading of securities by Index and Model-Driven Funds. However, many of the commenters requested specific modifications to the proposal in the following areas:

1. *Accounts Permitted to Cross-Trade.* Several comments noted that section I(a) and (b) of the proposal does not explicitly permit cross-trades between two or more Large Accounts. These comments noted that when more than one Large Account is buying or selling a particular security as part of a manager's cross-trading program, that security could be traded between two Large Accounts, two Index or Model-Driven Funds, or any combination thereof. In the operation of a cross-trading program, the matching of the buyer and seller would be coincidental. The commenters believe that a manager should be permitted to submit trade lists from each Large Account to its cross-trade allocation system and allow trades submitted on behalf of one Large Account to be crossed with trades submitted on behalf of another Large Account.

The Department notes that section I(a) and (b) of the proposal does not provide relief for cross-trades exclusively between two or more Large Accounts. The Department is of the view that such cross-trading would be outside the scope of the exemption because, among other things, there would be no ''triggering event'' to limit the amount of discretion exercised by the manager where such transactions occurred solely between Large Accounts.

The Department does recognize, however, that a manager's cross-trading program that complies with the requirements of the proposal may produce cross-trade opportunities that result from both triggering events of particular Index and Model-Driven Funds as well as from the decision of an independent fiduciary to restructure all or a portion of a Large Account's portfolio. Under such circumstances, the Department anticipates that the allocation of buying and selling opportunities across all Funds and Accounts participating in the cross-trading program may result in some individual cross-trades between two Large Accounts. In such an event, the exemption would permit the ''coincidental'' matching of a buyer and seller of particular securities where both buyer and seller are Large Accounts since such cross trades would be part of a unified process-driven cross-trading program where the allocations of available securities (from all Funds and/or Large Accounts) resulted from an objective process which did not permit the exercise of discretion by the manager, as required under section II(d) of the exemption. The Department has revised section I of the exemption to clarify this point.

Another commenter noted that no specific relief for cross-trades between two Large Accounts may be necessary where the decision to liquidate or restructure is made by an independent fiduciary or independent Account representative, and, therefore, the manager would not be acting as a fiduciary for either side of the transaction. Thus, the commenter suggested that the Department may wish to clarify whether additional relief for cross-trades exclusively between two or more Large Accounts is necessary. Alternatively, the commenter suggested that section I(b) of the proposal be modified to explicitly permit cross-trades solely between Large Accounts.

In response to this comment, the Department notes that violations of section 406(b)(2) of the Act would occur if the manager used its discretionary authority to determine whether to cross-trade securities between two Large Accounts at least one of which holds plan assets, which securities to cross-trade, the timing of such cross-trades,

[1] The Department has responsibility for the administration and enforcement of section 8477 of FERSA. Section 8477 establishes the standards of fiduciary responsibility and requirements relating to the activities of fiduciaries with respect to the Federal Thrift Savings Fund. All references herein to the fiduciary responsibility provisions of Part 4 of Title I of ERISA also apply to the corresponding provisions of FERSA. Accordingly, the relief provided under this class exemption applies to cross-trades of securities by the Federal Thrift Savings Fund.

[2] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

and the amount of securities to cross-trade notwithstanding that the overall determination to restructure the accounts was made by independent fiduciaries.

Accordingly, except as provided above, the Department has determined not to expand the relief provided under this exemption to include cross-trades solely between two or more Large Accounts. The Department notes that the final exemption provides a manager with a significant amount of time in which to conduct cross-trades for a Large Account in connection with a specific portfolio restructuring program. A manager's discretion to time specific cross-trades for two Large Accounts, absent the limitations provided by a process-driven cross-trading program involving ''triggering events'' for Index and Model-Driven Funds, would entail the type of discretion commonly exercised by managers for ''actively-managed'' accounts. In this regard, relief for cross-trades by ''actively-managed'' accounts and pooled funds containing ''plan assets'' will be considered by the Department in a separate proceeding.

2. *Use of closing prices.* One commenter suggested that the Department modify the requirement that all cross-trades occur at the closing prices for the securities on the relevant market in order to allow for alternate pricing methodologies (*e.g.,* ''volume weighted average price'' or ''VWAP''), after appropriate disclosure to the affected plans. Section II(a) of the proposal requires that the cross-trade be executed at the closing price, as defined in section IV(h). Section IV(h) of the proposal defines ''closing price'' as the price for a security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source used to establish the closing price and the time frame after the close of the market in which the closing price will be determined. The commenter does note that ''closing prices'' are the most appropriate prices currently in use for cross-trades of securities by Index and Model-Driven Funds, whose objective is to track the return of an index, since the calculation of an Index Fund's ''tracking error'' is based on closing prices for the securities listed in the relevant index. However, the commenter states that index providers may utilize alternative pricing methodologies in the future and suggests that the Department should consider broadening the exemption to include such pricing methodologies.

The Department notes that many commenters have indicated that the use of closing prices for cross-trades of securities by Index and Model-Driven Funds is common industry practice at the present time. The Department does not believe that it has sufficient information at this time to determine which types of alternative pricing methodologies may be used by managers in the future or how such pricing systems would enable Index and Model-Driven Funds to better achieve their investment goals and strategies. Therefore, the Department has determined not to modify the requirement that cross-trades be executed at the closing price. The Department would be prepared to consider additional relief at a later date upon proper demonstration that the appropriate findings can be made under section 408(a) of the Act with respect to other pricing methods for cross-traded securities.

3. *''Triggering Events'' and Cross-Trade Executions.* Several of the comments objected to the requirement in section II(b) of the proposal that any cross-trade of securities by a Fund be executed no later than the close of the second business day following a ''triggering event.'' These comments noted that previously issued individual exemptions for cross-trades by Index and Model-Driven Funds allowed cross-trades to be executed within three (3) business days of a ''triggering event'' and that the proposal's reduction of this requirement to two days is inconsistent with the stated premise of the proposal that cross-trading is beneficial to plans. Other comments noted that, once an investment decision is made, a manager should have 5 days to trade after a ''triggering event''—the same period of time to execute the trade as is permitted under the safe harbor provided in the Department's regulations for determining whether a broker-dealer is a fiduciary when it executes a securities transaction on behalf of a plan (see 29 CFR 2510.3–21(d)). Another comment requested that section II(b) be revised to require that cross-trades be executed either within three (3) days of a ''triggering event,'' or within such other period of time as the manager may disclose to the independent plan fiduciary pursuant to the disclosure requirements under section II(l) of the proposal.

In response to the comments, the Department has determined that it would be appropriate to modify section II(b) of the final exemption to require that all cross-trades by a Fund be executed no later than the close of the third business day following a Fund's ''triggering event.'' The Department notes that a three-day limit for cross-trades by a Fund following the relevant ''triggering event(s)'' has worked successfully in the past for managers who were granted individual exemptions.[3]

4. *Blackout Period for Cross-Trades by Model-Driven Funds.* Many of the comments objected to the requirement in section II(c) of the proposal that no cross-trades by a Model-Driven Fund may take place within ten (10) business days following any change made by the manager to the model underlying the Fund. The preamble to the proposal indicated that this restriction is intended to prevent model changes which might be made by managers, in part, to deliberately create additional cross-trading activity. The comments suggested that such a long delay on the ability of a manager to cross-trade after a change in the computer model was unnecessarily restrictive. According to the commenters, this condition would prevent cross-trading during the 10-day ''blackout'' period even though other ''triggering events'' were occurring in the Fund. Other commenters noted that there are already sufficient restrictions on a manager's discretion built into the proposal.

While most comments objected to the 10-day ''blackout'' period, several of the comments indicated that a 5-day period would be sufficient to safeguard against the Department's concerns regarding model changes that may be timed to create additional cross-trading opportunities. Other commenters suggested that, rather than imposing a ''blackout'' period for an arbitrary period of time (*e.g.,* 5 or 10 days), a more flexible approach could be used where a Model-Driven Fund would be able to cross-trade following the period of time necessary to complete the first re-balancing of the Fund's portfolio after the change is made by the manager to the Fund's model. Thus, under this approach, the ''blackout'' period could be less than three (3) days. One comment suggested that any cross-trading ''hiatus'' for a Fund should not be more than three (3) days. Other comments simply requested that the condition for a ''blackout'' period after a model change be deleted. Still other comments noted that, in the absence of a ''blackout'' period, a requirement for 10-day prior notice of a model change to each relevant plan's independent fiduciary should suffice. Finally, some

[3] See, for example, Prohibited Transaction Exemption (PTE) 95–56, 60 FR 35933 (July 12, 1999), regarding Mellon Bank, N.A., and its Affiliates.

commenters requested clarification that model changes made either (i) at the direction of a client plan, or (ii) as a direct result of input changes furnished by a third party data vendor (*e.g.,* BARRA or Vestek), would not invoke a ''blackout'' period because such model changes would not be the result of an exercise of discretion on the part of the manager.

The Department continues to believe that some ''blackout'' period is necessary to prevent managers from exercising their discretion over the criteria or data used for a model to generate specific cross-trade opportunities. However, in recognition that a 10-day restriction may be too long a period to prevent a Model-Driven Fund from cross-trading, the Department has decided to modify the final exemption to require that cross-trades not take place within three (3) business days following any change made by the manager to the model underlying the Fund.

In addition, with respect to the one commenter's concerns that model changes resulting from independent events should not invoke a ''blackout'' period for a Model-Driven Fund, the Department acknowledges that any change to a model which is not the result of an exercise of discretion by the manager (*e.g.,* changes directed by an independent plan fiduciary or furnished by a third party data vendor whose model is being used by the manager) would not require a ''blackout'' period for cross-trades by such Fund.

5. *Restrictions on Cross-Trades by a Manager Plan.* One comment objected to, and requested the deletion of, the requirement in section II(e) of the proposal that no more than ten (10) percent of the assets of any Fund or Large Account engaging in a cross-trade may be comprised of assets of employee benefit plans maintained by the manager for its own employees (*i.e.,* a Manager Plan), for which the manager exercises investment discretion. The comment stated that this condition would create a disincentive to in-house management and may cause investment managers to place assets of a Manager Plan with outside managers solely on the basis of the potential cost savings that the outside managers could derive from cross-trades.

The comment noted that for large plans, in-house management is frequently more cost-effective and keeps the asset management function closer to the people who have the most to gain from maximizing investment performance and minimizing investment risk. The comment further noted that larger in-house fiduciaries also manage assets for unaffiliated plans and other institutional investors, often as a result of a corporate spin-off with an accompanying plan restructuring. The comment stated that it understood the Department's concern regarding a manager's potential ability, through cross-trades, to unduly benefit a Manager Plan at the expense of its outside clients. However, the commenter believes that the other conditions of the proposal, including ''triggering events'' for cross-trades, detailed disclosures of cross-trading procedures and reporting of cross-trades resulting from a portfolio restructuring, would serve as a check on the manager's ability to favor a Manager Plan. Moreover, the commenter notes that to the extent that a Manager Plan's assets are commingled with assets of outside clients that are held in an Index or Model-Driven Fund managed as a collective investment fund, it would not be possible for the manager to ''favor'' only the Manager Plan in that Fund, even if the Manager Plan's assets represented more than 10 percent of the Fund's total assets. In any event, the comment noted that the 10 percent limitation should not apply to cross-trades that are made solely between Manager Plans.

With respect to the commenter's request to delete the 10% limitation in section II(e) of the proposal, the Department notes that, without such a percentage limitation, a substantial majority of the investors in a Fund could be comprised of Manager Plans. The Department does not believe that deletion of this percentage requirement would ensure a sufficient level of independent investor oversight of the manager's cross-trading program.

However, in consideration of the arguments raised by the commenters, the Department believes that a 20% limitation would still ensure a sufficient level of independent investor oversight in a Fund and would not unduly restrict the investment opportunities available for a Manager Plan with respect to such Funds. Therefore, the Department has modified section II(e) to increase the percentage limitation to 20%.

Accordingly, this exemption does not provide relief for cross-trades of securities of Index and Model-Driven Funds maintained by a manager under circumstances where the assets of the Manager Plans comprise all or a high percentage of the assets of the Fund. As noted above, the Department believes that the presence of independent fiduciaries to approve of plan participation in cross-trading programs following receipt of meaningful disclosures and the ability of such fiduciaries to periodically monitor the arrangements provide important protections under the exemption. However, in response to several comments, the Department wishes to take the opportunity to state that the granting of this exemption does not foreclose future consideration of additional relief for cross-trading transactions that do not fit within the framework developed by the Department for this exemption. For example, the Department is currently considering additional relief for transactions involving assets of plans managed by in-house managers, as well as for transactions involving discretionary asset managers.

With respect to the comments requesting that the exemption allow cross-trades to occur solely between two or more Manager Plans, the Department notes that relief for these transactions could involve the exercise of discretion on both sides to a transaction that is inconsistent with the underlying concept of the proposal—which is to provide relief for cross-trades made pursuant to ''process-driven'' investment strategies. For this reason, the Department has determined not to revise the exemption in this regard.

Another comment stated that section II(e) of the proposal does not adequately address how the independent authorization conditions in section II(i) through (n) of the proposal would apply to a Manager Plan, given that the plan fiduciary responsible for the plan's investment matters is unlikely to be independent of the manager. This comment suggested that the Department not require an independent fiduciary authorization for a Manager Plan's participation in the manager's cross-trading program. The commenter stated that the suggested modification would be consistent with other exemptions that do not apply an independent authorization requirement to plans of the fiduciary for whom relief is provided.[4] Accordingly, the commenter requests that the Department adopt a similar provision under the final exemption.

The Department concurs with the comments and has determined to modify section II(h) of the final exemption (formerly section II(i) of the proposal) to clarify that the requirement that the authorizing fiduciary be independent of the manager shall not apply in the case of a Manager Plan. Nevertheless, the appropriate fiduciary for the Manager Plan must still receive the proper disclosures and provide an

[4] In this regard, see section IV(d)(1)(A) of PTE 86–128 (51 FR at 41696, November 18, 1986).

authorization for the Manager Plan to participate in the manager's cross-trading program. This clarification modifies the disclosure and authorization requirements applicable to a plan's participation in a manager's cross-trading program, as described in section II(h) through (l) of the final exemption (formerly section II(i) through (m) of the proposal).

In addition, the Department has also determined to modify the requirements contained in section II(n) of the proposal, relating to disclosures to, and authorization by, a fiduciary of a Large Account who is independent of the manager for cross-trades in connection with a portfolio restructuring for the Large Account. To clarify this matter, the Department has revised section II(m) of the final exemption (formerly section II(n) of the proposal) by adding the parenthetical phrase "* * * (other than in the case of any assets of a Manager Plan)" to the requirements for an independent fiduciary discussed in section II(m)(1) through (4). In this regard, the Department notes that the final exemption still requires that proper disclosures be made to, and written authorization be made by, a Manager Plan's fiduciary in order for the Manager Plan to participate in a specific portfolio restructuring program.

6. *Exclusion of Thinly-Traded Equity Securities.* A number of commenters objected to the condition contained in section II(f)(1) of the proposal that required that cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources. In this regard, the terms "widely-held" and "actively-traded" are deemed to include any security listed in an "Index" (as that term is defined in section IV(c) of the proposal).

The comments stated that this requirement was not necessary for an exemption for cross-trading by Index and Model-Driven Funds. According to the comments, security selection for such Funds is driven solely by objective factors. The commenters argued that the level of trading and diversity of holdings for securities are not relevant to security selections made by Funds and that such factors should not serve as a constraint on the ability of such Funds to cross-trade. Generally, the comments noted that if market prices are readily available, the exclusion of "closely-held" and "thinly-traded" equity securities is unduly restrictive. They further argued that such limitations would prevent use of the exemption for many "small-cap" and foreign equity securities. Thus, the commenters urged the Department to delete the requirement that cross-traded equity securities be "widely-held" and "actively-traded."

As an alternative approach, one commenter suggested a limitation based on a comparison of the size of the cross-trade to the prior public trading volume in the security over a reasonable period of time prior to the date of the transaction. Such a volume limitation would prevent cross-trades of equity securities where the total volume of shares being cross-traded would exceed a certain percentage of the total number of shares publicly traded on the market during a particular period of time.

The Department is not persuaded by the arguments submitted in favor of deletion of the requirements contained in section II(f)(1) that equity securities that are cross-traded must be "widely-held" and "actively-traded." The Department continues to believe that cross-trades of "thinly-traded" securities raise issues as to whether both sides of the cross-trade have benefitted equally from the avoidance of adverse market impact. The avoidance of market impact would be more dramatic with "thinly-traded" equity securities than with equity securities that are "widely-held" and "actively-traded." [5] Similarly, the avoidance of liquidity restraints would be more dramatic with "thinly-traded" equity securities than with equity securities that are "widely-held" and "actively-traded."

In order to address its concerns without unnecessarily restricting the scope of relief under the proposal, the Department determined to deem equity securities that are included in an Index (as defined in section IV(c) of the exemption) to be "widely-held" and "actively-traded" for purposes of the exemption. However, the Department notes that the exemption does not preclude a manager from cross-trading a particular equity security not included in an index if the manager otherwise determines that such security is "widely-held" and "actively-traded." [6]

With respect to the comment suggesting a trading volume limitation, the Department notes that other commenters have discouraged it from addressing its concerns about cross-trades of "thinly-traded" securities through volume limitations, based on arbitrary percentages of the average daily trading volume for the securities. These commenters noted that the systems used by managers to allocate cross-trades among various Funds would have difficulty monitoring and re-allocating cross-traded securities to conform to such volume limitations.

In consideration of the above, the Department has determined not to modify section II(f)(1) in the final exemption.

7. *Cross-Trades of Securities Issued By the Manager.* Several comments objected to the requirement in section II(h) of the proposal that cross-trades not involve securities issued by the manager, unless the manager has obtained a separate prohibited transaction exemption for the acquisition of such security. One commenter noted that, although some institutions have obtained individual exemptions to deal with issues relating to acquisitions and dispositions of the manager's own stock by its Index and Model-Driven Funds,[7] others have concluded that no exemptive relief is necessary based on the facts and circumstances surrounding their individual situations. The commenter noted that, with regard to certain Index Funds, the manager does not exercise discretion in choosing the individual stocks to buy or sell, but rather seeks to mechanically purchase stocks selected through objective criteria which is outside of the manager's control. For example, in an Index Fund that is designed to replicate the exact capitalization-weighted composition of the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index), if the manager's stock is included in the index, that stock will be purchased in the proportion dictated by the index without the manager exercising any investment discretion. In such instances, the commenter stated that a manager's failure to acquire the stock would cause "tracking error," thereby subverting the goal of plan investors in

[5] The Department notes that these concerns would also arise with "thinly-traded" debt securities. However, since "thinly-traded" debt securities of different issuers with the same coupon rate, maturity, and credit rating are relatively fungible, the Department did not believe that it would be appropriate to apply these concepts to such securities for purposes of this exemption.

[6] With respect to the selection criteria for securities included in a Fund's portfolio which are not included in an Index, the Department assumes that any screening criteria and/or weighting procedures used to create the portfolio will be determined using purely mathematical computations based upon objective raw data. In addition, the Department assumes that the investment management agreement relating to each Fund, as approved by plan investors in the Fund, would set forth the specific dates on which the Fund's portfolio will be re-balanced. In this regard, the Department notes that no relief would be provided under this exemption for violations of section 406(b)(1) of the Act which may occur as a result of a manager's exercise of fiduciary authority or discretion to affect the components of an Index.

[7] For example, see Prohibited Transaction Exemption (PTE) 2000–30, 65 FR 37166 (June 13, 2000), regarding Barclays Bank PLC and its Affiliates.

the Fund to replicate the performance of the index. Other comments stated that it was not clear why a restriction for cross-trades of a manager's own stock is necessary and that there appears to be no reason to exclude such securities from the exemption. The Department accepts these comments and has determined to delete section II(h) of the proposal from the final exemption.

However, the Department notes that the exemption does not provide relief for any discretionary changes in an Index or Model-Driven Fund made by a manager, or any other discretionary decisions by the manager, which are designed to result in cross-trades of the manager's own stock for the benefit of the manager. Only cross-trades generated by non-discretionary changes in a Fund (*e.g.,* changes in the capitalization weighting of the manager's stock within an index, or the addition or removal of the manager's stock from an index) are covered by this exemption. Accordingly, no relief is provided for such discretionary changes regarding the manager's own stock.

As noted previously, all conditions in the final exemption have been re-designated to reflect the deletion of section II(h) of the proposal.

8. *Disclosure and Authorization Requirements.* Many comments raised concerns about the scope of the disclosure and authorization requirements contained in section II(j), (k), (l) and (m) of the proposal. In this regard, the comments noted that section II(i) of the proposal expressly states that the written authorization requirement for a plan's participation in a manager's cross-trading program only applies to plans investing in an Index or Model-Driven Fund that holds ''plan assets'' subject to the Act. The commenters urged the Department to clarify that the notice and disclosure requirements contained in section II(j), (k), (l) and (m) of the proposal similarly apply only to independent fiduciaries of employee benefit plans that invest in Funds holding plan assets.

The Department acknowledges the commenters' concerns regarding the intended scope of the disclosure and authorization requirements of the proposal and wishes to clarify that such requirements were meant to apply only to those Index and Model-Driven Funds which hold ''plan assets,'' as defined under the Department's regulations (*see* 29 CFR 2510.3–101). Therefore, the Department has revised section II(i) and (l) of the final exemption (formerly section II(j) and (m) of the proposal) accordingly.

Other comments objected to the prior written authorization requirement contained in section II(i) of the proposal, noting that prior individual exemptions granted by the Department for cross-trades by Index and Model-Driven Funds did not contain a similar requirement. These comments expressed the view that requiring prior written consent from an independent plan fiduciary as a condition for the plan to invest in a Fund that is part of a manager's cross-trading program serves no useful purpose. The comments noted that if a plan fiduciary were to develop any objections to cross-trading on philosophical grounds, then the plan would be free to withdraw from the Fund without penalty. The commenters believed that imposition of such a requirement will be perceived negatively by plan sponsors as an unnecessary obstacle to their ability to freely invest and reinvest plan assets in a manager's Funds.

The Department disagrees with the commenters' assertion that prior written consent from an independent plan fiduciary is unnecessary. The Department notes that part of the reason for proposing a class exemption for cross-trades of securities by Index and Model-Driven Funds was to address issues which had come to the Department's attention subsequent to its granting of a number of individual cross-trading exemptions.

As stated in the Notice published on March 20, 1998, the Department recognizes that it is important to retain the flexibility to periodically review its exemption policy in the context of changed circumstances or new facts that may be brought to its attention (*see* 63 FR at 13698, first paragraph of section entitled ''Issues and Developments''). The Department became aware of new issues involving cross-trades, including cross-trades by certain ''passive'' investment managers, through enforcement proceedings that raised concerns about whether plan fiduciaries were being provided with adequate disclosures regarding a manager's cross-trading program.

The Department continues to believe that adequate disclosures are necessary in order to enable a plan fiduciary to understand a manager's cross-trading program and how that program may affect the investment goals and objectives of Funds in which the plan may invest. The Department notes that the written authorization required by section II(i) of the proposal will apply to all of the Funds which participate in a manager's cross-trading program. Thus, once an authorization is provided by an independent fiduciary, a plan will be able to invest in any of the Funds without any additional authorization. The Department further notes that the authorizations required under the exemption for existing plan investors in any Funds may be obtained through a separate notice which describes the Funds' participation in the manager's cross-trading program. Under this requirement, failure to return the termination form by the date specified in the notice will be deemed to be an approval by the independent plan fiduciary of the plan's participation in the cross-trading program. Therefore, the Department has determined not to revise the authorization requirements in the final exemption.

With respect to the required content for the disclosures that must be furnished pursuant to sections II(l) and (m) of the proposal, the commenters were concerned that the initial and annual notices must identify all Index and Model-Driven Funds participating in the manager's cross-trading program, together with detailed information regarding the ''triggering events'' and other information relating to each Fund. The comments noted that requiring such disclosures would cause managers to violate confidentiality restrictions contained in many client agreements and would also raise privacy concerns for clients who do not wish their identity, or the fact that they maintain an investment account with the manager, to be disclosed. In this regard, the comments noted that managers are restricted from disclosing confidential information about clients, particularly the Funds in which clients invest. In addition, the comments stated that such detailed disclosure would be of little practical value to plan fiduciaries when deciding whether to authorize or maintain plan investments in a particular Fund. As an alternative, several comments suggested that the initial and annual notices should include only general descriptions of the types of Funds that participate in the manager's cross-trading program and of the ''triggering events'' that give rise to cross-trade opportunities.

The Department acknowledges the concerns expressed by the commenters regarding the confidentiality restrictions contained in client agreements and privacy concerns relating to the identity of such clients and the Funds in which they may invest. Nevertheless, the Department continues to believe that the required disclosures will be useful to a plan fiduciary in understanding the scope and operation of the manager's cross-trading program and whether participation in the program remains in the plan's best interests. However, the Department does not intend for the disclosures in section II(k) of the

exemption (relating to a manager's ongoing disclosures of information about the cross-trading program) or section II(l) of the exemption (relating to disclosures for an annual re-authorization of the cross-trading program by an independent plan fiduciary) to require that privileged or confidential information be revealed by the manager. For example, these provisions, as revised herein, do not require a manager to furnish to independent plan fiduciaries the identity of any clients of the manager that are invested in other Funds that are added to the cross-trading program. In addition, any information disclosed by the manager regarding new ''triggering events'' for existing Funds need only provide such information with respect to Funds in which the plans are invested. With respect to disclosures regarding new ''triggering events'' which must be provided to the relevant independent plan fiduciaries of the affected Funds (as discussed further below), the Department does not believe that the final exemption requires the disclosure of privileged or confidential information.

Other commenters requested that the Department clarify that portion of section II(l) of the proposal which requires that the manager notify each relevant independent plan fiduciary of the addition of Funds to the manager's cross-trading program, or changes to, or additions of, ''triggering events'' regarding Funds, following a plan's initial authorization of participation in the program. Specifically, the comments requested clarification as to whether the phrase ''each relevant independent plan fiduciary'' was intended by the Department to be limited to fiduciaries of plans invested in those specific Funds that are added to a manager's cross-trading program or whose ''triggering events'' have been modified. The comments noted that it would be burdensome to require managers to notify all plans regarding modifications to ''triggering events'' that may occur in all Funds, including Funds in which such plans are not invested, just because such Funds participate in the cross-trading program. In addition, it would be difficult to provide notice to all plans prior to, or within 10 days following, such events affecting any of the Funds.

In consideration of such comments, the Department has modified section II(k) of the final exemption (formerly section II(l) of the proposal) to provide that the ongoing notices of information that must be furnished to ''each relevant independent plan fiduciary'' are required to be made only to those fiduciaries whose plans are invested in the affected Funds (*i.e.*, the Funds added to the program or whose ''triggering events'' have been changed).

Other commenters stated that certain of the disclosures are unnecessary. For example, several comments objected to the statement required by section II(k) of the proposal, relating to investment decisions for a Fund not being based on the availability of cross-trade opportunities. These comments noted that this statement would be duplicative of other information required in the proposal and would provide no added protection to plans, other than the manager's promise to follow the conditions of the exemption. Certain comments objected to the disclosures described in section II(l) of the proposal including the required statement that ''* * * the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction * * *.'' In addition, section II(l) of the proposal required that the Manager explain how its cross-trading practices and procedures will mitigate such conflicts. According to the comments, following the terms of the exemption should be viewed as precisely what is necessary to mitigate the conflicts. Thus, the commenters believed that it will be misleading to inform client plans that the operation of a manager's cross-trading program, even with adherence to the terms of the proposed exemption, will still create conflicts.

The Department believes that specific statements relating to the fact that investment decisions for a Fund will not be based on cross-trade opportunities (as described in section II(k) of the proposal), and that there are potential conflicts of interest in such cross-trades (as described in section II(l) of the proposal), are important to an independent plan fiduciary's understanding of the issues involved with cross-trades of securities. The Department notes that, in any cross-trading program, including cross-trading programs maintained by ''passive'' investment managers, there would be a potential for abuse if a manager were able to control cross-trade opportunities to favor the interests of particular clients. Therefore, the Department has determined not to revise the exemption as requested.

Section II(l) of the proposal requires that independent plan fiduciaries be furnished with detailed disclosure of the procedures to be implemented under the manager's cross-trading program (including the ''triggering events'' that will create cross-trading opportunities, the independent pricing services that will be used by the manager to price the cross-traded securities, and the methods that will be used for determining closing price). The comments noted that the preamble to the proposal suggests with respect to foreign securities that the applicable independent pricing source should provide the price in local currency rates and, if that currency is other than U.S. dollars, also provide the U.S. dollar exchange rate (*see* first paragraph of Section IV.B. of the preamble, 64 FR at 70062). In this regard, the comments noted that most pricing services that price foreign securities do not provide currency conversion rates. These commenters suggested that managers be allowed to use another independent service to provide such conversion rates, so long as the service is disclosed to plan investors.

The Department acknowledges the commenter's concerns, based on the language contained in the preamble to the proposal. However, the Department did not intend to prevent a manager from using another independent service to provide the appropriate currency exchange rates for a foreign security. Thus, the Department notes that no modification to section II(k) of the final exemption (formerly section II(l) of the proposal) is necessary.

A number of the comments noted that Section II(m) of the proposal (relating to a plan's annual re-authorization of its participation in the manager's cross-trading program) appears to require, among other things, that each plan fiduciary be notified annually of: (i) Any change in the ''triggering events'' in the Funds in which their plans are invested; (ii) any change in the ''triggering events'' in the Funds in which their plans are not invested; and (iii) any ''triggering events'' and other disclosure items for new Funds added to the cross-trading program since the last annual notice. These comments stated that the latter two categories of disclosures noted above are irrelevant to a plan fiduciary who has no assets invested in those Funds. The commenters believe that such information in the annual disclosures will make it more difficult for plans to properly analyze data which is relevant to an annual re-authorization of the plan's participation in the manager's cross-trading program. The comments suggested that annual disclosures to a plan fiduciary should be limited to that material which is relevant to its plan's investments in the manager's Funds. If a plan fiduciary determines to invest in other Funds for which no annual disclosure information has been previously provided, the fiduciary would then be provided with

the material relevant to the new Funds in such annual disclosures.[8]

Upon consideration of these comments, the Department believes that some plan fiduciaries may still find information about other Funds to be useful and should be provided that information by the manager upon request. Therefore, in order to limit the scope of the annual disclosures required in section II(l) of the exemption (formerly section II(m) of the proposal), the Department has modified that section to read as follows:

''* * * Such annual re-authorization must *provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested as well as explicit notification that the plan fiduciary may upon request obtain* disclosures regarding any new Funds *in which the plan is not invested* that are added to the cross-trading program, or any new triggering events that may have been added to existing Funds *in which the plan is not invested,* since the time of the initial authorization * * * etc.'' [emphasis added]

A commenter requested that the annual re-authorization requirement contained in section II(m) of the proposal be deleted in its entirety. The commenter stated that coordinating such a re-authorization would entail the same administrative burdens as a requirement for periodic notice of new Funds to all plan fiduciaries investing in Funds which participate in the manager's cross-trading program. According to the commenter, a plan could request that the plan's investment in any Fund that participates in the cross-trading program be terminated without penalty. Thus, the commenter maintained that a plan's participants and beneficiaries should be adequately protected without having to re-authorize participation in the cross-trading program every year.

In the event that the Department determined to retain the annual re-authorization requirement, the commenter requested two modifications to section II(m) of the proposal. First, the commenter believed that providing a plan fiduciary with a list of new Funds participating in the manager's cross-trading program would not provide the fiduciary with any useful information. Therefore, the commenter requested that the requirement in section II(m) of the proposal for disclosure regarding new Funds added to the manager's cross-trading program or any new triggering events be modified to permit the manager to make such information available upon request. Second, the commenter noted that section II(m) of the proposal requires the use of a ''special termination form'' in the annual re-authorization. The commenter noted that there are other methods of communication which would be easier and more efficient for a plan fiduciary to use in the event that the fiduciary decides to terminate its prior authorization.

The Department has determined that it would not be appropriate to delete the requirement for plan fiduciaries of affected Funds to provide an annual re-authorization of their plan's participation in the manager's cross-trading program. The Department believes that annual re-authorization will help ensure effective monitoring of a cross-trading program by the affected plans. Therefore, the Department has retained this requirement in section II(l) of the exemption.

However, in response to the comments regarding the need for a special termination form to be sent to each plan fiduciary, the Department has modified section II(l) of the exemption (formerly section II(m) of the proposal) to permit other forms of written communication to be used to terminate an authorization. Thus, the following new sentence has been added to section II(l) of the final exemption:

''* * * In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request.''

In response to the comments regarding the requirement in the proposal for the annual disclosures to include a list of any new Funds participating in the manager's cross-trading program in which the plan is not invested, or any new triggering events for a manager's Funds in which the plan is not invested, the Department has previously noted above that section II(l) of the exemption has been modified to require that such information need only be provided by a manager upon request.

9. *Authorizations for Large Account Restructures.* Under section II(n)(3) of the proposal, a portfolio restructuring program must be completed within the later of: (i) 30 days of the initial authorization by an independent fiduciary of the Large Account; or (ii) 30 days of the manager's initial receipt of assets associated with the portfolio restructuring, unless such fiduciary agrees to extend this period for another 30-days. The comments requested a number of revisions and clarifications to this provision. First, the commenters noted that most portfolio restructuring programs are completed within a thirty (30) day period. However, very large portfolio restructurings may take considerably longer. In such instances, the commenters believe that it would be more efficient to allow the manager to obtain authorization to extend the 30-day restructure period at the time of the Large Account fiduciary's initial authorization. Second, one commenter questioned whether securities that cannot be cross-traded with the manager's Funds and, therefore, must be traded on the open market, are affected by the 30-day deadline. Third, another commenter suggested that the 30-day period should begin for each asset on the date on which the asset is included as part of the restructuring account. According to the comment, this change would be responsive to the fact that the manager or trading adviser for a Large Account may not receive all assets to be restructured at the same time.

In response to these comments, the Department has determined to modify section II(m)(3) of the exemption (formerly section II(n)(3) of the proposal) to allow the initial authorization by an independent fiduciary of the Large Account for a specific portfolio restructuring to be effective for 60 days. The 60-day restructure period can be extended for another 30 days if the independent fiduciary for the Large Account agrees to the extension. In addition, the Department wishes to clarify that only securities that are cross-traded are affected by the requirements of section II(m) of the final exemption.

Accordingly, the Department has revised section II(m)(3) of the exemption (formerly section II(n)(3) of the proposal) to provide that:

''* * **All cross-trades made in connection with* the portfolio restructuring program must be completed by the Manager within *sixty (60) days* of the initial authorization * * *'' [emphasis added]

In light of the Department's revision to section II(m)(3), the Department does not believe that any further relief is warranted.

10. *Record-keeping.* Several comments expressed concerns regarding the record-keeping requirements contained in section III(a) of the proposal. In this regard, section III(a)(2)

[8] With respect to such annual disclosures, it should be noted that all relevant independent plan fiduciaries of plans invested in a Fund that is added to a manager's cross-trading program, or has changed or added any ''triggering events'' for cross-trades by such Fund after the Fund is included in the program, will already have been provided a separate notice of such event(s) prior to, or within ten (10) days following, each event, as required by section II(k) of the exemption.

requires, among other things, that each manager retain, on a Fund by Fund basis, trade lists which specify the amounts of each security to be purchased or sold for a Fund. This information should be provided in sufficient detail to allow an independent plan fiduciary to verify that each of the investment decisions for the Fund were made in response to specific triggering events. Section III(a)(3) of the proposal requires that, on a Fund by Fund basis, the manager must record the actual trades executed on a particular day, noting which of those trades (including all cross-trades) resulted from triggering events. The comments noted that the preamble to the proposal does not seem to require that the notations necessary to meet the requirements of section III(a)(3) specify which specific triggering event caused each trade (or cross-trade), provided that it is clear that a triggering event(s) caused such trades.

Other commenters stated that the record-keeping requirements of section III(a) are unnecessary because, under the proposed exemption, an Index or Model-Driven Fund can only cross-trade as a result of a triggering event. In addition, these commenters suggested that such a record-keeping requirement would be extremely burdensome if it became necessary to ''tag'' each purchase or sale of a security to a specific triggering event. In such instances, the comments stated that the exemption would involve so much additional record-keeping and costs (*i.e.,* millions of dollars worth per year per manager) that no manager will be able to economically maintain or operate a cross-trading program for its client accounts. Conversely, the comments noted that if the Department believes that ''tagging'' is not required under the proposal, this record-keeping requirement should be deleted since all cross-trades by a manager's Funds will result from at least one ''triggering event'' in order to meet the conditions of the exemption. Other comments noted that records regarding specific triggering events should be retained only if the triggering event resulted in actual cross-trading.

In response to these comments, the Department notes that other commenters have indicated that the record-keeping requirements contained in section III of the proposal are consistent with their current record-keeping practices. In this regard, the Department understands that under the individual exemptions granted for cross-trades by Index and Model-Driven Funds, managers have established record-keeping and monitoring systems designed to ensure compliance with the terms and conditions of those exemptions.

The Department notes that the record-keeping requirements contained in the proposal, while more specific than those of the individual exemptions, were designed to be consistent with the record-keeping systems of managers operating cross-trading programs under the individual exemptions. Thus, the Department is not persuaded by the arguments submitted in favor of deletion of this record-keeping requirement. The Department continues to believe that records must be maintained with sufficient specificity to permit an independent plan fiduciary to verify compliance with the conditions of the exemption.

In response to the commenter's request for clarification as to whether the record-keeping requirements contained in section III(a) of the proposal would mandate that a manager's records demonstrate that each cross-trade by a Fund resulted from a specific ''triggering event,'' the Department believes that the following discussion will be helpful.

When more than one bona fide ''triggering event'' has occurred, the Department expects that a manager's record-keeping system will be able to demonstrate that the cross-trades by the Fund resulted from such ''triggering events.'' For example, if a manager's record-keeping system enables the manager to ''link'' purchases and sales of specific amounts of securities in each cross-trade by a Fund to ''triggering events'' within the 3-day period, then such a system would satisfy the record-keeping requirements of the exemption.

As discussed by the Department in the preamble to the proposal, the record-keeping requirements are intended to assure that independent plan fiduciaries will be able to determine whether Funds and their underlying models or indexes operate consistently in following the input of triggering event information. This information should be kept in sufficient detail to enable a replication of specific historical events in order to satisfy an inquiry by interested persons (as described in section III(b)(1) of the exemption). The Department further notes that records regarding specific triggering events need only be maintained if such events resulted in cross-trades that are subject to the conditions of this exemption.

Another comment noted that section III(a) of the proposal requires that the records must be ''* * * readily available to assure accessibility and maintained so that an independent fiduciary'' may obtain them within a reasonable period of time. The comment noted that most of the required records would be maintained electronically and archived after a few months. The commenter maintained that, while such records are retrievable within a period of days or weeks, the exemption should recognize that the volume of trading and records involved would make faster retrieval impossible. Another comment requested that the Department acknowledge that a ''reasonable period of time'' in this context would be thirty (30) days. In this regard, the Department acknowledges that thirty (30) days may be a reasonable period of time for obtaining and assembling the required information for interested persons if the volume and complexity of the cross-trading records that must be assembled for such persons is significant.

Other comments noted that making records available to plan participants and beneficiaries would be unduly burdensome and would add no significant additional protections.

The Department has determined that it would be appropriate to modify section III(b)(1) to exclude plan participants and beneficiaries unless such persons are participants or beneficiaries in a Manager Plan.

11. *Definition of ''Index Fund'' and ''Model-Driven Fund.''* Several comments noted that, unlike prior individual exemptions for cross-trading, the definition of the term ''Index Fund'' in the proposal (*see* section IV(a) below) requires not only that a Fund be designed to track the rate of return, risk profile and other characteristics of an independently maintained securities index, but also that such tracking occur either by ''* * * replicating the same combination of securities which compose such index'' or by ''* * * sampling the securities which compose such index based on objective criteria and data.'' The commenters urged the Department to clarify that this definition was not intended to preclude an Index Fund from holding cash, cash equivalents or other equitizing cash investments.

The Department concurs with this comment. The definition of the term ''Index Fund'' under section IV(a) of the exemption is not intended to prevent a Fund from holding cash, cash equivalents or other equitizing cash investments. For example, the Department notes that the definition of ''triggering event'' contained in section IV(d)(3) of the exemption specifically contemplates that a Fund may have an accumulation of cash which is attributable to interest or dividends on,

and/or tender offers for, portfolio securities.

In this regard, the Department recognizes that significant levels of cash or cash equivalents in an Index Fund generally will create ''tracking error'' vis-a-vis the independently maintained securities index which the Fund is designed to track. Therefore, assets other than securities which are included in the designated index will only be held by a Fund for a limited period of time.

However, the Department also understands that many managers use temporary cash investments to buy index futures contracts (*e.g.,* S&P 500 futures) in order to more precisely replicate the rate of return and other characteristics of the index prior to investing in the actual securities. It is the view of the Department that the term ''Index Fund'' would allow the use of futures contracts by an Index Fund in order to reduce ''tracking error'' and to achieve the designated investment objectives of the Fund provided that such use is disclosed to plan investors. The disclosures should adequately describe the appropriate parameters and limitations on a manager's use of futures contracts for a Fund.

In this regard, the Department's conclusion is based upon its understanding that ''passive'' investment strategies employed by managers for Index Funds do not primarily rely on futures contracts to achieve a Fund's investment objectives, but rather rely on such contracts as a means for temporarily investing cash accumulations in the Fund prior to actually investing in and holding securities contained in the index. Conversely, the Department is unable to conclude that an Index Fund which invests primarily in index futures contracts as a means of achieving its investment objectives would meet the definition of ''Index Fund'' under section IV(a) of this exemption.

Several comments noted that the definition of the term ''Model-Driven Fund'' under the proposal (see section IV(b) below) requires that the identity and amount of a Fund's securities be ''* * * selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager * * *'' These comments expressed concern that the definition does not appear to include separately managed Index Fund portfolios that exclude specific securities based on independent plan sponsor direction (as opposed to the determination of a computer model). In this regard, the comments noted that the Department has recognized in the past that the composition of a Model-Driven Fund may be influenced by client-initiated instructions to delete certain securities (*e.g.,* tobacco stocks) from an index that is otherwise being tracked. The comments suggested that the definition should be modified to include plan sponsor direction. According to the comments, this modification will not affect the intended purpose of the definition, which is to limit the amount of discretion a manager may exercise to affect the identity or amount of securities to be purchased or sold and to assure that such transactions are not part of an arrangement to benefit the manager.

In response to these comments, the Department notes that the definition of ''Model-Driven Fund'' in section IV(b)(1) of the exemption would include separately managed Fund portfolios which exclude specific securities based upon an independent plan fiduciary's (*e.g.,* a plan sponsor's) direction. The Department understands that managers will often use computer models which are designed to ''screen'' certain securities that are listed in an index from the acquisitions that a Fund would otherwise make, in order to accommodate plan sponsor direction. The definition of ''Model-Driven Fund,'' by allowing the identity of the securities which compose the Fund to be selected by a computer model, can accommodate Fund portfolios which are specifically designed to meet the guidelines dictated by plan sponsors. Thus, the Department does not believe that any further modification to this definition is necessary.

Another commenter noted that the definition of ''Model-Driven Fund'' in section IV(b) of the proposal is limited to Funds which use a computer model to ''transform an Index.'' The commenter stated that many Model-Driven Funds do not seek merely to ''transform an index'' by limiting their investment universe to those securities contained in a single Index, but rather seek to apply quantitative techniques using various forms of publicly available data across a wide spectrum of securities. For example, the Fund may seek to design a portfolio based on the largest 2500 stocks in the United States, based on market capitalization. These stocks may be contained in various independently maintained indexes, but not all 2500 stocks will be contained in a single index. The commenter urged the Department to delete the phrase ''* * * to transform an Index'' from section IV(b)(1) of the proposal and to substitute in its place the following ''* * * to achieve an investment return that is either based upon or measured by an Index.''

The Department does not believe that it would be appropriate in the context of a passive cross-trading exemption to permit managers to use indexes merely as a benchmark for the performance of a portfolio of a Model-Driven Fund. Accordingly, the Department has determined not to revise this definition.

Another comment related to both the definitions of ''Index Fund'' and ''Model-Driven Fund.'' The commenter noted that sections IV(a)(3) and IV(b)(2) of the proposal provide that each definition includes any investment fund, account or portfolio which either contains ''plan assets,'' is an investment company registered under the Investment Company Act of 1940, ''* * * or is an institutional investor.'' The comment noted that many index and model-driven funds are structured as common trust funds, limited liability companies, New Hampshire trusts or other forms of collective investment vehicles. Many of these funds do not contain ''plan assets'' subject to the Act, but are managed in the exact same manner as Funds that do contain ''plan assets.'' The commenter is concerned that the definitions of ''Index Fund'' and ''Model-Driven Fund'' will not include such funds unless the phrase ''* * * or is an institutional investor'' contained in sections IV(a)(3) and IV(b)(2) is modified to provide ''* * * or contains assets of one or more institutional investors.''

The Department concurs with the commenter's suggestion and, accordingly, has modified sections IV(a)(3) and IV(b)(2) of the final exemption.

12. *Definition of ''Triggering Event.''* Section IV(d) of the proposal defines the term ''triggering event'' by listing four specific ''events'' that are included within the definition. In this regard, the comments noted that the preamble to the proposal states that if a computer model used to create a portfolio for a Model-Driven Fund is designed to exclude particular securities for reasons specified by a plan client or the plan's investment guidelines, such exclusions would not be considered a separate triggering event. However, the comments noted that some of the Department's prior individual exemptions for cross-trading included, as a separate triggering event, the following:

''* * * a change in the composition or weighting of a portfolio used for a Model-Driven Fund which results from an independent fiduciary's decision to exclude certain stocks or types of stocks from the

Fund even though such stocks are part of the index used by the Fund.''[9]

The commenters requested that the Department modify the definition of ''triggering event'' to include a similar provision under the final exemption.

In response to the comments, the Department has added a fifth ''triggering event'' to section IV(d) of the exemption to incorporate the suggestion made by the commenters. Thus, section IV(d)(5) of the exemption includes within the definition of the term ''triggering event'' purchases and sales of securities made by Funds after changes to the portfolio of an Index or Model-Driven Fund solely as a result of an independent fiduciary's decision to exclude certain securities from the Fund.

In this regard, the Department notes that with respect to a Model-Driven Fund, if the exclusion of certain securities is ''built into'' the original design of the model, the operation of that model by the manager should not create additional cross-trade opportunities for the Fund, since the Fund was not designed to buy the specific securities which are excluded. Similarly, if an ''excluded security'' is added to an index which has been used by the model to create a portfolio for a Model-Driven Fund, the model should have been already programed to ''screen'' such securities from the acquisitions made by the Fund. Moreover, the additional triggering event would not apply with respect to any Index Fund or Model-Driven Fund that is a collective investment fund maintained by the manager, if the decision to exclude certain securities from the Fund's portfolio was made by the manager.

Lastly, the Department notes that the ''triggering event'' contained in section IV(d) would be effective on the date that the independent fiduciary directed the manager to exclude the securities from the Index or Model-Driven Fund, and, accordingly, the cross-trades of such securities would have to occur within three (3) business days, pursuant to the requirements of section II(b) of the exemption.

Another comment suggested a further modification to the definition of ''triggering event'' in the proposal. The commenter objected to the requirement in section IV(d)(2) of the proposal that a triggering event include a ''specific amount'' of net change in the overall level of assets in a Fund, as a result of investments and withdrawals, and the requirement in section IV(d)(3) of a ''specified amount'' of accumulated cash or stock in a Fund. The commenter suggested that the references to ''specific amount'' and ''specified amount'' be changed to ''material amount'' in both section IV(d)(2) and (3). In connection with this modification, the commenter also requested that a manager be allowed to either (i) identify such material amount in advance as a specified amount of net change (or accumulated cash or securities) relating to such Fund, or (ii) disclose, in the description of the manager's cross-trading practices, pursuant to section II(l) of the proposal, the parameters for determining a material amount of net change (or accumulated cash or stock), including any amount of discretion retained by the manager that may affect such net change (or accumulated cash or securities), in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given.

The Department has considered the commenter's suggestions for changes to the definition of ''triggering event,'' as contained in section IV(d)(2) and (3) of the proposal, and has determined that it would be appropriate to modify the final exemption. Thus, section IV(d)(2) and (3) of the exemption now reads as follows:

''(d) Triggering Event:

(2) A *material* amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) such *material* amount has either been *identified in advance as a specified amount of net change relating to such Fund and* disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund, *or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;* and * * *.'' [emphasis added]

(3) An accumulation in the Fund of a *material* amount of either:

(A) cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) stock attributable to dividends on portfolio securities; provided that such *material* amount has *either* been *identified in advance as a specified amount relating to such Fund and* disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, *or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given* * * * '' [emphasis added]

In connection with the modification noted above, the Department cautions managers that any parameters established for determining a material amount of net change (or accumulated cash or securities), and any discretion retained by the manager which may affect such amounts, must be sufficiently limited and described in enough detail to enable proper identification and monitoring of such triggering events by plan fiduciaries.

Further, with respect to the ''triggering events'' that must be disclosed to client plans, certain comments noted that section III(b)(2) of the proposal permits a manager, under certain circumstances, to refuse to disclose to clients any trade secrets, or commercial or financial information that is privileged or confidential, where such information is contained in the manager's record-keeping system. However, these comments noted that the proposal does not include a similar protection for privileged or confidential information included within the mandated client disclosures for triggering events. For example, the triggering event contained in section IV(d)(4) of the proposal (*i.e.,* a change in the model-prescribed portfolio solely by operation of the formulae contained in the computer model underlying the Fund) can only be utilized if certain disclosures are made to an independent fiduciary of each of the plans participating in the Model-Driven Fund. The comments stated that certain of these disclosures may involve highly proprietary information that the investment manager is reluctant to disclose to clients, particularly through a written communication that a client could easily transmit to others. Thus, the comments requested that the Department allow a manager to refuse to disclose trade secrets, or commercial or financial information that is privileged or confidential, so long as the manager notes the reason for non-disclosure in its general disclosure to clients.

In this regard, the Department does not believe that the disclosure of basic factors for making changes in a portfolio for a Model-Driven Fund would require that privileged or confidential information be revealed by the manager to independent plan fiduciaries. Therefore, the Department has not modified the language of section IV(d)(4) in the final exemption.

13. *Definition of ''Large Account.''* One comment noted that section IV(e) of the proposal excludes from the definition of ''Large Account'' any ''

[9] *See,* for example, condition (c)(2) of PTE 94–36 (59 FR 19249, April 22, 1994) regarding The Northern Trust Company.

* * * Index Fund or Model-Driven Fund sponsored, maintained, *trusteed* or managed by the Manager * * *'' [emphasis added] The commenter noted that some banks act as a directed trustee for group trusts which are managed by third party investment managers. In these situations, the bank acts as a non-discretionary trustee and its primary role is to provide custody and record-keeping services for the group trust. The commenter stated that there is no reason that an independent investment manager should be precluded from retaining the bank as a trading adviser for the liquidation or restructuring of the Large Account since, in its capacity as a non-discretionary trustee, the bank will not be making the underlying investment decisions for the portfolio restructuring of the Large Account. Therefore, the commenter requested that the word ''trusteed'' be deleted from the definition of ''Large Account'' in section IV(e) of the proposal.

In this regard, the Department does not believe that it would be appropriate to include all investment funds trusteed by the manager in the definition of ''Large Account'' contained in the exemption. However, the Department has determined it would be appropriate to modify the language of section IV(e) of the final exemption to include an Index Fund or a Model-Driven Fund for which the manager is a nondiscretionary trustee. Consequently, the Department has added a definition of the term ''nondiscretionary trustee'' to the exemption under section IV(m).

Other comments suggested that the definition of ''Large Account'' in section IV(e) of the proposal should be modified by deleting entirely the phrase which provides that a Large Account '' * * * is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed or managed by the Manager.'' These comments stated that, if the decision to liquidate a Fund's portfolio is made by an independent plan fiduciary, and such decision is entirely out of the manager's control, it should not matter whether the portfolio is an Index or Model-Driven Fund that is managed by the manager.

In response to these comments, the Department has determined that it would not be appropriate to make the requested modification to the definition of the term ''Large Account'' in section IV(e) of the exemption. The Department continues to believe that cross-trades by a manager's Index and Model-Driven Funds should be subject to the requirements and limitations applicable to Funds under the exemption, such as specified ''triggering events'' for cross-trade opportunities.

Another comment noted that section IV(e) of the proposal defines a ''Large Account'' as any investment fund, account or portfolio that, among other things, holds assets of a registered investment company other than an investment company advised or sponsored by the manager. The commenter believes that the limitation excluding investment companies advised or sponsored by the manager should be deleted. The commenter argued that the Large Account would not be participating in the manager's cross-trading program unless it were advised by the manager, and that the definition in the proposal excludes the very category of investment companies for which relief was intended.

The Department notes that the commenter's argument that a Large Account could be, and most likely would be, a registered investment company advised or sponsored by the manager is not consistent with the record upon which the exemption was developed by the Department. In this regard, the category of investment companies for which relief was intended under this exemption, as well as under prior individual exemptions, were those entities that are independent of the manager operating the cross-trading program, but who decide to hire the manager in order to carry out a specific portfolio restructuring program. In such instances, the restructured portfolio will often become an ''Index Fund'' or ''Model-Driven Fund'' (as defined herein) that will be managed by the manager.

However, the situation described by the commenter, which would permit the inclusion within a manager's cross-trading program for Large Accounts of ''actively-managed'' investment company portfolios advised by the manager, would expand the scope of the exemption beyond that intended by the Department. As discussed further below, the Department is not providing relief at this time for cross-trading programs involving ''actively-managed'' accounts or funds. Therefore, in response to this comment, the Department has determined not to modify section IV(e)(3) of the final exemption.

Other comments noted that the definition of ''Large Account'' in section IV(e) of the proposal requires that the plan or institutional investor whose assets are held by the Large Account have $50 million or more in total assets. The commenter suggested that the definition be revised to permit assets of affiliated plans maintained by the same employer, or controlled group of employers, to be aggregated for purposes of meeting the $50 million threshold.

In consideration of the commenter's suggestion, the Department has modified the definition of ''Large Account'' in section IV(e)(1) of the exemption to permit the aggregation of assets of employee benefit plans maintained by the same employer, or controlled group of employers, provided that such assets are pooled for investment purposes in a single master trust.

14. *Definition of ''Portfolio Restructuring Program.''* Several comments noted that the term ''portfolio restructuring program'' is defined in section IV(f) of the proposal to include the buying and selling of securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund ''managed by the Manager * * *'' In this regard, the comments noted that portfolio restructuring assignments occasionally contemplate that a manager will construct an Index Fund or Model-Driven Fund portfolio or some other type of portfolio which, once formed, will be managed on an ongoing basis by either the plan sponsor or an independent third party manager. In addition, the comments stated that since the terms ''Index Fund'' and ''Model-Driven Fund'' are already defined in the proposal, the phrase ''* * * managed by the Manager'' in the definition of ''portfolio restructuring program'' is unnecessary. Accordingly, the commenters suggested that the phrase ''managed by the Manager'' be deleted from the definition in section IV(f) of the final exemption.

In response to the comments, the Department has modified the definition of the term ''portfolio restructuring program'' in section IV(f) of the exemption to reads as follows:

> ''(f) Portfolio restructuring program—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager *or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager,* without regard to the requirements of * * * etc.'' [emphasis added]

15. *Volume Restrictions for Cross-Traded Securities.* A number of commenters responded to the Department's request for information on whether Index and Model-Driven Funds may hold a significant amount of the outstanding shares of a particular security, whether cross-trades of securities by a manager's Funds may represent a high percentage of the

outstanding daily trading volume for such securities, and whether some volume limitation for cross-traded securities would be appropriate. The commenters expressed the view that, even if a manager's Funds were cross-trading securities representing a high percentage of the average daily trading volume, there is no reason to impose a volume limitation in the exemption so long as the purchase or sale of such securities is mandated by a triggering event of an Index or Model-Driven Fund and the securities can be crossed at the closing market price, as established through an independent pricing source. These comments noted that such cross-trades are beneficial to plans regardless of whether the securities involved are thinly-traded, whether the Index and Model-Driven Funds hold significant amounts of the outstanding shares of the securities, or whether the manager's trading represents a high percentage of the trading volume for the securities. The commenters again noted the significant savings which are incurred by avoiding brokerage commissions and bid-ask spreads.

Thus, most commenters expressed the view that if a manager's Index and Model-Driven Funds have a bona fide need to buy or sell specific amounts of securities on any particular business day, in response to various triggering events, there should not be an arbitrary percentage limitation that would inhibit the manager from taking advantage of all cross-trade opportunities for such securities. However, another commenter expressed the view that the Department's exclusion of ''thinly-traded'' equity securities (by requiring in section II(f)(1) of the proposal that all cross-traded equity securities must be ''widely-held'' and ''actively-traded'') is unduly burdensome and unnecessary. As an alternative, this commenter recommended that the Department include ''thinly-traded'' equity securities, but impose some reasonable limitation on cross-trades of such securities, based on a comparison of the size of the cross-trade to the prior trading volume in the security over a reasonable period of time prior to the date of the transaction.

After considering the comments regarding the inclusion of ''thinly-traded'' equity securities in the exemption if an appropriate volume limitation is imposed, the Department has determined not to adopt this approach. The Department's decision is based, in part, on its understanding that, since a process-driven cross-trading program must allocate cross-trade opportunities in a mechanical fashion, it would not be economically feasible to override such allocations whenever the equity securities involved exceeded a specified volume limitation. Therefore, the Department continues to believe that it is more appropriate to allow cross-trades of all equity securities that are listed in an independently maintained third party index (*see* definition of ''Index'' in section IV(c) of the exemption), without any volume limitations. Under the exemption, the Department deemed all equity securities listed in an index to be ''widely-held'' and ''actively-traded'' for purposes of this exemption in order to allow the largest possible universe of equity securities to be cross-traded within the parameters of the conditions of the exemption. In the Department's view, the inclusion of ''thinly-traded'' equity securities that are not listed in an index would require additional safeguards, such as volume information and limitations, which may not be economically feasible in connection with the operation of a manager's cross-trading program.

16. *Avoidance of Adverse Market Impact; Savings in Transaction Costs; A Computer Model's Consideration of Liquidity.* In response to specific questions posed by the Department in the preamble to the proposal on the avoidance of market impact through cross-trades (*see* Section IV.B. of the preamble, 64 FR at 70063), several commenters noted that, by cross-trading at the close of market price, both sides of the cross-trade benefit by avoiding the potential for adverse market impact. The comments stated that adverse market impact occurs each time an investor trades through the market as the market price moves away from the offered price, meaning that the price decreases when the investor wants to sell and increases when the investor wants to buy.

One commenter stated that the Department appears to have concerns about the fact that a manager's avoidance of market impact may not be beneficial to plans at certain times. These concerns originate from the assumption that a manager could benefit certain plans by using a particular trade's market impact as an opportunity for obtaining a better price for a security on the open market. In this regard, the commenter noted that market impact is unpredictable and cannot be forecast by the manager. The commenter stated that managers believe that in most cases market impact is to be avoided, if possible. Thus, the commenter expressed the view that cross-trading, by avoiding the uncertainty of market impact, enables a manager to avoid the possibility of harm to certain clients which would result if trades were placed on the open market, and also eliminate transaction costs and custody costs.

Most commenters noted that a ''passive'' manager would have no incentive to use the limited amount of discretion allowed by its cross-trading program to favor one Fund or Account over another. One commenter stated that each manager would have the same trading goals for all Funds and Large Accounts—i.e., to maximize cross-trading and to minimize transaction costs for open market transactions.

Another commenter noted that Index and Model-Driven Funds are often buying and selling the same securities because there are many different Funds maintained by a manager that are tracking the same index (*e.g.,* the S&P 500 Index). Many managers also design portfolios for Model-Driven Funds that are based on the same index. Moreover, many large capitalization stocks are listed in more than one index. The commenters noted that cross-trades of such stocks between Index and Model-Driven Funds, pursuant to triggering events that occur without a manager's exercise of any investment discretion, at an objectively determined ''closing price'' as reported from a reputable third party source, are an efficient and effective way of meeting the investment objectives of plans which invest in such Funds.

In response, the Department recognizes the merits of cross-trading to reduce or eliminate transaction costs in the context of ''passively managed'' assets. In such instances, a manager has limited investment discretion as a result of independently determined triggering events.

With respect to the Department's concerns that the avoidance of market impact through cross-trades may not equally benefit both sides of such transactions, the Department notes that the potential for abuse appears to be significantly less with ''passively-managed'' assets than with ''actively-managed'' assets. However, the Department does not believe that the commenters have demonstrated that cross-trading creates market impact savings, if any, for both sides to any given cross-trade. The Department has been provided with data by one commenter demonstrating some market impact savings for one side in cross-trades of significant amounts of securities (*i.e.* market impact savings were measured where the cross-trades involved a large capitalization security traded in amounts averaging one and a quarter days of the average public trading volume of the security). No data

was provided to the Department measuring market impact savings for smaller cross-trades, nor was data provided measuring the market impact savings, if any, for each side in a particular cross-trade. Even so, as noted below, certain commenters have concluded that there has been significant transaction cost savings with cross-trading ''passively-managed'' assets and that these savings are attributable solely to the reduction or elimination of brokerage commissions and bid-ask spreads.

Another commenter noted that the preamble to the proposal suggests that relief would not be available under the exemption if the computer model used for a Fund considered the liquidity or availability of securities that are in the cross-trading ''network'' of Funds managed by the manager (*see* the sixth paragraph of Section IV.A. of the preamble, 64 FR at 70062). This commenter expressed the view that such a restriction is harmful to plans and misapprehends the operation of some ''passively-managed'' Funds. The commenter stated that truly ''passive'' Index Funds track the relevant indices and attempt to reduce or eliminate ''tracking error'' between the value of the Fund's portfolio vis-a-vis the value of the index's portfolio. The more identical an Index Fund's portfolio looks when compared to the underlying index's portfolio, and the cheaper the acquisition and disposition costs of the securities in the index, the lower the ''tracking error'' becomes. Thus, a successful ''passive'' manager is one who has the least amount of tracking error in its Index Funds. The commenter noted that the model used for such an Index Fund will always start with the proposition that the portfolio wants each security in the index in its precise capitalization-weighting, as determined by the index. The more information the model has about the costs of acquisition of any security, the less the tracking error will be for the Fund's portfolio and the more successful the manager will be in meeting the plan's investment objectives.

The Department's concerns regarding a computer model's consideration of liquidity or availability of certain securities that are in the manager's cross-trading ''network'' are best illustrated by the following example:

A computer model for a Model-Driven Fund identifies three possible securities for acquisition by the Fund in an attempt to achieve the optimal portfolio for the Fund within the specified guidelines dictated by the Fund's investors. These securities are identified, for purposes of this example, as ''A'', ''B'', and ''C''. Security ''A'' is the most liquid of the three securities, based on third party data, and security ''C'' is the least liquid. The model considers each security's liquidity factor, among other factors, and the estimated transaction costs which would be incurred to acquire the security, as part of its determination as to which security to buy and how much of the security to buy.

Assume that the model is programmed to make the selection of which security to buy, and the amount to buy, by considering only the liquidity information about each security that is available based on third party market data. Let's also assume that, based on such data, the model chooses security ''A'' and does not choose securities ''B'' or ''C''. The exemption would apply for acquisition of security ''A'' to be made by the Fund through cross-trades.

However, let's assume that the model is programmed to make the selection of which security to buy, and the amount to buy, by considering cross-trade opportunities that are available for each security, in addition to other liquidity information that is available based on third party data. Let's also assume that security ''C'' is available through a cross-trade and that the Fund can acquire all the securities it needs through cross-trades of that security. The model has been programmed to ''view'' security ''C'' as having ''infinite liquidity'' because the data within the control of the manager suggests that it can be acquired without incurring any transaction costs. However, this circumstance results from the fact that the necessary number of shares of security ''C'' which the model has determined that the Fund needs is available through cross-trades. Under this example, security ''C'' is considerably less liquid than security ''A'' based upon available third party data. The exemption would not apply for acquisitions of security ''C'' to be made by the Fund through cross-trades because the selection of security ''C'' was based upon the manager's own liquidity information at that time and not liquidity information based solely on third party data.

The Department believes that adoption of the commenter's liquidity approach could result in cross-trading opportunities within the control of the manager impacting upon the investment determinations of the Fund. In this regard, the Department notes that investment decisions made by a Fund may not be based in whole or in part by the manager on the availability of cross-trade opportunities and must be made prior to the identification and determination of any cross-trade opportunities, pursuant to the statement required under section II(j) of the exemption. Therefore, any model's consideration of information relating to cross-trade opportunities for particular securities, as part of the model's determination of which securities to buy or sell, how much of a security to buy or sell, or when to execute a sale or purchase of the securities for the Fund, would not be permitted under the exemption. The Department continues to believe that liquidity considerations and other factors considered by a computer model must be based on independent third party data, not within the control of the manager, as described under section IV(b) of the exemption.

Other commenters noted that the transaction cost savings attributable to cross-trades, pursuant to cross-trading programs operating under the Department's existing individual exemptions, are significant. In response to the Department's questions about whether such cost savings are attributable to the avoidance of market impact or only commission savings, one commenter stated that its clients have saved over $300 million annually through cross-trading and that this calculation is based entirely on the avoidance of brokerage commissions and bid-ask spreads. Another commenter stated that its clients saved approximately $282 million in the calendar year 1999, based on the total number of shares that were cross-traded during the year, broken down by the market in which each share would have been traded if it went to the open market. This commenter also confirmed that these savings are attributable to savings in brokerage commissions, bid-ask spreads and taxes, as applicable in each market. Thus, in both instances, the commenters noted significant cost savings even without taking into consideration whatever measurable ''savings'' may have been attributable to the avoidance of market impact.

17. *Effect of Class Exemption on Individual Exemptions; Appropriate Scope of Relief for the Exemption.* The commenters expressed many different points of view in response to the Department's invitation for comments on the effect that the continuation of current individual exemptions, for cross-trades by Index and Model-Driven Funds, would have in offering an advantage to those investment managers granted such relief compared to those managers which would utilize this exemption (*see* Section IV.H. of the preamble to the proposal, 64 FR at 70066).

One comment noted that the proposal would expand the relief for cross-trading beyond the relief currently available under the individual exemptions, particularly by permitting cross-trades of debt securities and by expanding the definitions of Funds and Large Accounts that are permitted to cross-trade. However, the comment also noted that the proposal imposes a number of additional disclosure, authorization and operational requirements on cross-trading programs. Thus, the comment stated that it is not

clear whether managers who continue to utilize their individual exemptions would have an advantage over those utilizing the class exemption.

Another comment stated that some individual exemptions have been relied upon by managers for more than a decade and that such exemptions should remain in place after the class exemption is granted. This commenter noted that managers have invested substantial time and resources in the current cross-trading systems, and other programmatic features in such systems have been developed in reliance upon the conditions of the individual exemptions. Any revocation of the existing exemptions would mandate conformance with the new exemption's requirements and features, and the manager's cross-trading procedures and systems would have to be significantly revised. The commenter stated that such revisions would place an undue burden on the managers, would add significant costs to the operation of the existing cross-trading programs, and would not provide any added benefits to the managers' client plans.

However, other commenters stated that, by permitting firms to continue to rely on individual exemptions that have, in some respects, less stringent conditions than the proposal, the Department would create a competitive advantage for advisers who already have exemptions. Some commenters further stated that, by granting the class exemption, the Department is already creating a competitive advantage for firms that ''passively manage'' plan assets over those which ''actively manage'' such assets. These commenters urged the Department to hold all firms to the same standard, at least with respect to the class exemption, and eliminate the existing individual exemptions to ensure an ''equal playing field'' for all similarly situated managers that ''passively-manage'' assets.

In this regard, the Department has not made a determination at the present time whether to revoke any past individual exemptions for cross-trading programs involving Index and Model-Driven Funds. It is not clear whether managers who continue to utilize their individual exemptions will have an advantage over those utilizing the class exemption since cross-trades may only be performed if they conform with either all of the provisions of an individual exemption or all of the provisions of the class exemption (*i.e.,* managers who hold individual exemptions may not pick and choose selected provisions from their own exemptions and the class exemption). As noted in the preamble to the proposal, prior to modifying or revoking any individual exemption, the Department must publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on any proposed revocation or modification of such exemptions.

Other commenters requested that the Department expand the proposal to permit cross-trades by ''actively-managed'' plan accounts of a manager. These commenters noted that the clear advantages of cross-trading should be available to both actively and passively managed funds, and that the Department's exclusion of ''actively-managed'' funds from the current exemption is unfair.

Other commenters stated that it was appropriate for the Department to handle cross-trades by ''passively-managed'' funds separately. Such commenters noted that ''passive'' managers have far less discretion than ''active'' managers. One comment stated that a class exemption attempting to address both ''actively'' and ''passively'' managed funds would be confusing and could lead to the application of unnecessarily burdensome conditions on ''passively-managed'' funds to address concerns applicable only to ''actively-managed'' funds.

The Department has determined to grant this exemption for cross-trading programs involving Index and Model-Driven Funds and to separately proceed with its consideration of relief for cross-trades by ''actively-managed'' plan accounts or pooled funds containing ''plan assets'' covered by the Act.[10] The Department acknowledges that appropriate cross-trades of securities by ''actively-managed'' accounts or funds would be beneficial to employee benefit plans in saving transaction costs and avoiding adverse market impact for both sides of the transactions. However, the Department believes that adequate safeguards must be developed in order to prevent abuses which could occur when an investment manager has significant investment discretion which could be used to benefit certain clients or the manager itself at the expense of its ERISA-covered accounts.

The Department is currently considering what conditions may be necessary to address potential abuses in cross-trading programs that would involve ''actively-managed'' plan accounts. The Department continues to receive and review additional information from various interested persons which will assist the Department in developing a separate class exemption for cross-trades by ''actively-managed'' plan accounts.

Description of the Exemption

A. Scope and General Rule

The exemption consists of four parts. Section I sets forth the general exemption and describes the transactions covered by the exemption. Sections II and III contain specific and general conditions applicable to transactions described in section I. Section IV contains definitions for certain terms used in the exemption.

The exemption set forth in section I provides relief from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of ERISA and section 8477(c)(2)(B) of FERSA for: (a) The purchase and sale of securities between an Index or Model-Driven Fund and another such Fund, at least one of which holds ''plan assets'' subject to the Act; and (b) the purchase and sale of securities between such Funds and certain large accounts (Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts. The exemption also would apply to cross-trades between two or more Large Accounts if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts pursuant to which securities are cross-traded solely as a result of the objective operation of the program.

The exemption under section I(a) applies to cross-trades of securities among Index or Model-Driven Funds managed by the same investment manager where both Funds contain plan assets. However, as stated above, a violation of section 406(b)(2) occurs when an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an entity which contains plan assets. As a result, the exemption is also applicable to situations where the investment manager has investment discretion for both Funds involved in a cross-trade but one Fund does not contain plan assets

[10] Interested persons may wish to review the information received by the Department in response to the Notice published in the **Federal Register** on March 20, 1998 (63 FR 13696) and in the testimony provided at the public hearing on cross-trades of securities by ''actively-managed'' plan accounts and pooled funds (the Hearing), which was held at the Department on February 10 and 11, 2000. Copies of the comments received by the Department in response to the Notice, and the testimony received at the Hearing, are available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210. For copies of the comments relating to the Notice, interested persons should request File No. M–9043. For copies of the testimony received at the Hearing, interested persons should request File No. D–10851 (Cross-Trades of Securities Hearing).

because, for example, it is registered as an investment company under the Investment Company Act of 1940 (*e.g.,* a mutual fund). Any mutual fund or other institutional investor covered by the exemption under section I(a) must meet the definition of an Index Fund or a Model-Driven Fund, contained in section IV(a) and (b). Institutional investors which meet the definitions contained in section IV(a) and (b) may include, but are not limited to, entities such as insurance company separate accounts or general accounts, governmental plans, university endowment funds, charitable foundation funds, trusts or other funds exempt from taxation under section 501(a) of the Code.

The exemption under section I(b) applies to the purchase and sale of securities between a Fund and a Large Account, at least one of which holds ''plan assets'' subject to ERISA or FERSA, pursuant to portfolio restructuring programs initiated on behalf of certain Large Accounts. The term ''Large Account'' is defined in section IV(e) to include certain large employee benefit plans or other large institutional investors with at least $50 million in total assets, including certain insurance company separate and general accounts and registered investment companies. For purposes of the $50 million requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated, provided that such assets are pooled for investment purposes in a single master trust. A portfolio restructuring program, as defined in section IV(f), involves the buying and selling of securities on behalf of a Large Account in order to produce a portfolio of securities which either becomes an Index Fund or a Model-Driven Fund or resembles such a Fund, or to carry out a liquidation of a specified portfolio of securities for a Large Account. The Fund or other portfolio resulting from the restructuring program will be either managed by the manager of the Fund or by an investment manager that is independent of the Fund manager. The definition of a Large Account requires that an independent fiduciary authorize a Fund manager (*i.e.,* a Manager, as defined in section IV(i)) to restructure all or part of the portfolio or to act as a ''trading adviser'' as defined in section IV(g) with respect to the restructuring of such portfolio. The trading adviser's role is limited under the exemption to the disposition within a stated period of time of a securities portfolio of a Large Account and/or the creation of the required portfolio.

Under this definition, the manager may not have any discretionary authority for any asset allocation, restructuring or liquidation decisions or otherwise provide investment advice with respect to such transactions. In this regard, the Department notes that it expects the investment manager to comply with the applicable securities laws in connection with any portfolio restructuring program.

Section IV(a) and (b) require that the Index or Model-Driven Fund be based upon an index which represents the investment performance of a specific segment of the public market for equity or debt securities. Section IV(c) requires that the index be established and maintained by an independent organization which is: in the business of providing financial information or brokerage services to institutional clients; a publisher of financial news or information; or a public stock exchange or association of securities dealers. The index must be a standardized index of securities which is not specifically tailored for the use of the Fund manager.

Section IV(a) and (b) specifically define Index and Model-Driven Funds for purposes of the exemption. These definitions are designed to limit the amount of discretion the manager can exercise to affect the identity or amount of securities to be purchased or sold and to assure that the purchase or sale of any security is not part of an arrangement, agreement or understanding designed to benefit the manager. Under the definition of ''Index Fund'' contained in section IV(a), the investment manager must track the rate of return of an independently maintained securities index by either replicating the same combination of securities which compose such index or by investing in a representative sample of such portfolio based on objective criteria and data designed to recreate the projected return, risk profile and other characteristics of the index. Under the definition of ''Model-Driven Fund'' contained in section IV(b), trading decisions are passive or process-driven since the identity and the amount of the securities contained in the Fund must be selected by a computer model. Although the manager can use its discretion to design the computer model, the model must be based on prescribed objective criteria using third party data, not within the control of the manager, to transform an independently maintained index. Thus, for example, no exemptive relief would be available if the manager designed the computer model to consider the liquidity or the availability of a security based on information that was solely within the control of the manager. In such instances, the computer model would be considering data that was not from a third party source, and that was within the control of the manager.

B. Price and Securities

Section II(a) of the exemption requires that each cross-trade be executed at the closing price for that security. In addition, section II(g) of the exemption requires that the manager may not receive any brokerage fees or commissions as a result of the cross-trades.

Closing price is defined in section IV(h) as the price for the security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market. The procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined. The pricing source must be independent of the manager and must be engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and must be widely recognized as an accurate and reliable source for such information. In this regard, some managers may use one pricing service for pricing domestic securities and another pricing service for pricing foreign securities. With respect to foreign securities, the applicable independent pricing source should provide the price in local currency rates and, if that currency is other than U.S. dollars, may also provide the U.S. dollar exchange rate. Thus, securities must be cross-traded in all cases at the closing prices received by the manager from the relevant independent pricing source.

The Department has adopted this definition of the term ''closing price'' in an effort to be consistent with the methods for determining the price of cross-traded securities currently utilized by Index and Model-Driven Fund investment managers, according to both the comments received in response to the proposal published on December 15, 1999 and the comments received in response to the Notice published on March 20, 1998. In addition, the Department believes that this pricing approach will ensure that the pricing procedures utilized are objective and not subject to the discretion or

manipulation of any of the involved parties.

Section II(f) of the exemption requires that cross-trades of either equity securities or fixed income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. Section II(f)(1) further requires that cross-trades of equity securities only involve securities which are widely-held and actively-traded. In this regard, the Department notes that equity securities will be deemed to be ''widely-held'' and ''actively-traded'' under this exemption if such securities are included in an independently maintained index, as defined in section IV(c) herein. The Department expects that managers, in making their determinations regarding the types of securities included within the scope of this condition, would consider information about the average daily trading volume for equities traded on any recognized securities exchange or automated broker-dealer quotation system which would be readily available from independent pricing sources or other independent sources which publish financial news and information.

C. Triggering Events

Section II(b) of the exemption requires that any purchase or sale of securities by a Fund in a cross-trade with another Fund or with a Large Account occur as a direct result of a ''triggering event,'' as defined in section IV(d), and that such cross-trade be executed no later than the close of the third business day following such ''triggering event.'' The Department believes that trading pursuant to triggering events limits the discretion of the manager to affect the identity or amount of securities to be purchased or sold. Triggering events, as defined in section IV(d), are outside the control of the manager and will ''automatically'' cause the buy or sell decision to occur.

Triggering events are defined in section IV(d) as:

(1) A change in the composition or weighting of the index underlying the Fund by the independent organization creating and maintaining the index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities;

provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

The first three triggering events have been adopted based upon those triggering events utilized in prior individual exemptions, with an additional requirement in the second and third triggering events for the amounts involved, or the parameters for determining such amounts, to be specified and disclosed to independent fiduciaries of plans investing in the Funds. In addition, the fourth triggering event has been added in order to clarify that a triggering event also occurs as a result of a change in the composition of a Fund's portfolio mandated solely by operation of the computer model underlying the Fund. For example, if a model contained a formula for a Fund requiring only stocks with a certain price/earnings ratio and some of the originally prescribed stocks now were above the specified tolerances of the formula relating to that model, a triggering event would occur requiring that those stocks be sold by the Fund. The Department has included this triggering event under this exemption in order to clarify that Model-Driven Funds may need to buy or sell securities to conform to changes to the portfolio prescribed by the model that differ from changes to a portfolio necessitated as a result of changes to the underlying index. The exemption does not require that a computer model be operated according to any fixed frequency. However, the Department is of the view that the exemption would not be available unless the formulae contained in the computer model underlying a Fund were operated by the manager on an objective basis rather than being used for the purpose of creating cross-trade opportunities in response to the needs of other Funds or certain Large Accounts.

The Department further notes that under section II(k), disclosures must be made to independent plan fiduciaries of the affected Funds regarding the triggering events that would create cross-trading opportunities for such Funds under the manager's cross-trading program. Under the model-driven triggering event contained in the exemption, the basic factors for making changes in the composition of the

portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model must be included in these disclosures.

The Department notes that a fifth triggering event has been added to the final exemption, based on comments received, which permits plan sponsors to direct the manager to delete certain securities from an Index or Model-Driven Fund where the Fund otherwise would hold such securities based upon the particular index or computer model. The Department understands that this triggering event is consistent with practices utilized by certain managers in prior individual exemptions and will facilitate additional cross-trade opportunities.

D. Modifications to the Computer Model

Section II(c) requires that, if the model or the computer program used to generate the model underlying the Fund is changed by the manager, no cross-trades of any securities can be engaged in pursuant to the exemption for three (3) business days following the change. This restriction recognizes the authority of the manager to change assumptions involving computer models after the model's activation.

The Department notes that the three (3) business day ''blackout'' period for cross-trades by a Fund after any change made by the manager to the model underlying the Fund is intended to prevent model changes which might be made by managers, in part, to deliberately create additional cross-trading activity.

In addition, under section IV(b), a computer model for a Model-Driven Fund must use independent third party data, not within the control of the manager, to transform an index.

E. Allocation of Cross-Trade Opportunities

The Department notes that frequently the amount of a security which all of the Funds need to buy may be less than the amount of such security which all of the Funds will need to sell, or vice versa. Thus, section II(d) of the exemption requires that all cross-trade opportunities be allocated by the manager among potential buyers, or sellers, on an objective basis. Under section II(d), this basis for allocation must have been previously disclosed to independent fiduciaries on behalf of each plan investor, and must not permit the exercise of any discretion by the manager. In previous individual exemptions, applicants have relied on different systems (*e.g.* pro rata or queue) to objectively allocate cross-trade opportunities. While it appears to the Department that a pro rata basis of allocation would be the method least subject to scrutiny, the Department recognizes the validity of other workable objective systems. However, the Department cautions that such systems may not permit the exercise of discretion by the manager.

F. Requirements for Cross-Trades by a Manager Plan

Section II(e) of the exemption requires that no more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade may be comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion. In this regard, the Department wishes to note that this percentage limitation would not apply to any Manager Plan(s) for which the Manager does not exercise investment discretion. For example, a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options would not be subject to the twenty (20) percent limit.

G. Disclosures and Authorizations

Section II(h) of the exemption requires that a plan's participation in a cross-trade program of a manager involving Index and Model-Driven Funds at least one of which holds ''plan assets'' subject to the Act will be subject to the prior written authorization of a plan fiduciary who is independent of the manager. However, for purposes of this exemption, the requirement that the authorizing fiduciary be independent of the manager shall not apply in the case of a Manager Plan. In this regard, section II(e) of the exemption requires that no more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade may be comprised of assets of a Manager Plan for which the Manager exercises investment discretion.

The authorization described in section II(h), once given, would apply to all Funds that comprise the manager's cross-trading program at the time of the authorization. Thus, a new authorization by an independent plan fiduciary for investment in a different Fund, in which the plan did not invest at the time of its initial written authorization, would not be necessary to the extent that such Fund was part of the program at the time of the original authorization. However, where a manager makes new Funds available for plan investors or changes triggering events relating to Funds subject to the initial authorization, and such Funds or triggering events were not previously disclosed as being part of the manager's cross-trading program, section II(k) of the exemption requires that the manager furnish additional disclosures to an independent plan fiduciary. The Manager shall provide a notice to each relevant independent plan fiduciary of plans invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

As noted below, section II(l) requires that disclosures be made to the relevant independent plan fiduciaries regarding each Fund in which the plan is invested as part of the notice required for a plan's annual re-authorization of its participation in the manager's cross-trading program. In addition, section II(l) requires that disclosures regarding any new Funds, or new triggering events in any existing Funds, in which a plan is not invested be made available, upon request, as part of the notice required for a plan's annual re-authorization of its participation in the manager's cross-trading program.

Section II(i) clarifies the meaning of Section II(h) with respect to existing plan investors in any of the Funds, which hold plan assets subject to the Act, prior to a manager's implementation of a cross-trading program. Under section II(i), the authorizing independent fiduciary must be furnished notice and an opportunity to object to that plan's participation in the program not less than forty-five (45) days prior to the implementation of the cross-trade program. Section II(i) further states that the failure of the authorizing fiduciary to return a special termination form provided in the notice by a specified date that is at least thirty (30) days from receipt shall be deemed to be approval of the plan's participation in the program. If the authorizing plan fiduciary objects to the plan's inclusion in the program, the plan will be given the opportunity to withdraw without penalty prior to the program's implementation.

Sections II(j) and II(k) describe the type of information that is required to be disclosed to a plan fiduciary prior to the authorization defined in sections II(h)

and II(i). Important among these disclosures is a statement describing the conflicts that will exist as a result of the manager's cross-trading activities. This statement must also detail and explain how the manager's practices and procedures will mitigate such conflicts. Such writing must include a statement that:

Investment decisions will not be based in whole or in part by the manager on the availability of cross-trade opportunities. These investment decisions include:

- Which securities to buy or sell;
- How much of each security to buy or sell; and,
- When to execute a sale or purchase of each security.

Investment decisions will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon triggering events set forth in the exemption. Records documenting each cross-trade transaction will be retained by the manager.

Section II(l) further requires that notice be provided to the authorizing plan fiduciary at least annually of the plan's right to terminate its participation in the cross-trading program and its investment in any of the Funds without penalty. Such notice must be accompanied by a special termination form. Failure to return the form by a specified date that is at least thirty (30) days from the receipt will be deemed approval of the plan's continued participation in the cross-trading program. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization will provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or any new ''triggering events'' (as defined in Section IV(d) below) that may have been added to existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h), or the time of the notice described in Section II(i).

Section II(m) of the exemption details specific requirements for cross-trades of securities which will occur in connection with a Large Account restructuring. In particular, section II(m)(2) requires that the authorization for such cross-trades must be made in writing prior to the cross-trade transactions by fiduciaries of the Large Account who are independent of the manager (except in the case of a Manager Plan). Such authorization must follow full written disclosure of information regarding the cross-trading program. Such authorization may be terminated at will upon receipt by the manager of written notice of termination. A termination form must be supplied to the Large Account fiduciary concurrent with the written description of the cross-trading program. Under section II(m)(3), the portfolio restructuring program must be completed within sixty (60) days of the initial authorization made by the Large Account's fiduciary (or initial receipt of assets associated with the restructuring, if later), unless the Large Account's fiduciary agrees in writing to extend this period for another thirty (30) days. Large Account fiduciaries may utilize the termination form or any other written instrument at any time within the 60-day period, or the additional 30-day period, to terminate their prior written authorization for cross-trading related to the portfolio restructuring program. Under section II(m)(4), within thirty (30) days of the completion of the restructuring program, the Large Account fiduciary must be fully apprised in writing of the results of the transactions. Such writing may include, upon request by the Large Account fiduciary, additional information sufficient to allow the independent fiduciary for the Large Account to verify the need for each cross-trade and the determination of the above decisions. However, pursuant to section III(b)(2) the manager may refuse to disclose to a Large Account fiduciary or other person any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person, provided that by the close of the thirtieth (30th) day following the request, the manager gives a written notice to such person advising that person both the reasons for the refusal and that the Department may request such information.

H. Recordkeeping

Section III(a) requires that the manager maintain records necessary to allow a determination of whether the conditions of the exemption have been met. These records must be maintained for a period of six (6) years from the date of the transactions. These records must include records which identify the following:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) which securities to buy or sell; (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades were associated with triggering events.

As explained to the Department, the triggering event relating to net investments in, or withdrawals from, a Fund results in new cash to invest in the Fund or the need to liquidate securities from a Fund. The model or index underlying the Fund determines which securities to purchase or sell based on the amount of net investments or withdrawals. This process results in the creation of a trade list or a model prescribed output of securities to be purchased or sold. The manager then applies its objective allocation system to the trade lists or model prescribed outputs used for other Funds participating in the cross-trade program to determine which particular cross-trades will occur between Funds. For those securities which cannot be cross-traded after application of the manager's allocation system, the necessary purchases and sales are made through other means.

In the view of the Department, records must be maintained of this cross-trading activity with enough specificity to allow an independent plan fiduciary to verify whether the safeguards of this exemption have been met. Section II(b) requires that any cross-trade of securities by a Fund occur as a direct result of a ''triggering event'' as defined in section IV(d) and is executed no later than the close of the third business day following such ''triggering event.'' Among the records needed to verify that this condition has been satisfied, section III(a)(1) requires that, on a Fund by Fund basis, the manager maintain a record of the specific triggering events which result in the creation of the list of specific securities for the manager's cross-trading system. Section III(a)(2) further requires that, on a Fund by Fund basis, the manager maintain records of

the model prescribed output or trade list, as well as the procedures utilized by the manager to determine which securities to buy or sell and how much of each security to buy or sell, in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events. As provided by section III(b)(2), if such material is viewed as a trade secret, or privileged or confidential, the manager may refuse to disclose such information if reasons for the refusal are given and the person is also notified that the Department of Labor may request such information.

This record-keeping requirement is intended to assure that independent plan fiduciaries will be able to determine whether Funds and their underlying models or indexes operate consistently in following the input of triggering event information. The Department does not intend to prescribe a detailed list of records that are necessary to enable a determination of compliance with the exemption because the necessary records will depend on the nature of the Index or Model-Driven Funds involved and other factors. This information, however, should be kept in sufficient detail to enable a replication of specific historical events in order to satisfy an inquiry by persons identified in section III(b)(1). Section III(a)(3) requires that, on a Fund by Fund basis, records be maintained of the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Further, Section III(a) requires that the records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified in section III(b)(1), may obtain them within a reasonable time. This requirement should permit the records to be retrieved and assembled quickly, regardless of the location in which they are maintained. For those records which are not maintained electronically, the records should be maintained in a central location to facilitate assembly and examination.

All records must be unconditionally available at their customary location for examination during normal business hours by the persons described in section III(b)(1). However, as noted with respect to information which may be disclosed to a Large Account fiduciary or other person, the manager may refuse to disclose to a person, other than a duly authorized employee or representative of the Department or the Internal Revenue Service, any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person. In such instances, the manager shall provide, by the close of the thirtieth (30th) day following the request, a written notice to such person advising that person of the reasons for the refusal and that the Department may request such information.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is applicable to a particular transaction only if the conditions specified in the class exemption are met; and

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I—Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

Effective April 15, 2002, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Sections II and III below are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund (a ''Fund''), as defined in Sections IV(a) and (b) below, and another Fund, at least one of which holds ''plan assets'' subject to the Act or FERSA; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) below, at least one of which holds ''plan assets'' subject to the Act or FERSA, pursuant to a portfolio restructuring program, as defined in Section IV(f) below, of the Large Account;

Notwithstanding the foregoing, this exemption shall apply to cross-trades between two or more Large Accounts pursuant to a portfolio restructuring program if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely as a result of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined in Section IV(h) below.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d) below, and is executed no later than the close of the third business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (*e.g.,* a pro rata allocation system).

(e) No more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade is

comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms ''widely-held'' and ''actively-traded'' shall be deemed to include any security listed in an Index, as defined in Section IV(c) below; and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions as a result of the cross-trade.

(h) As of the date this exemption is granted, a plan's participation in the Manager's cross-trading program as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of the plan which is independent of the Manager engaging in the cross-trade transactions. For purposes of this exemption, the requirement that the authorizing fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days prior to the implementation of the cross-trading program, that describes the Fund's participation in the Manager's cross-trading program, provided that:

(1) Such notice allows each plan an opportunity to object to the plan's participation in the cross-trading program as a Fund investor by providing the plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager by a specified date (which shall be at least 30 days following the plan's receipt of the form) shall be deemed to be an approval by the plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to the plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, the plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty prior to the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h), and in the notice described in Section II(i), the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' set forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Prior to any authorization set forth in Section II(h), and at the time of any notice described in Section II(i) above, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the manager to price the cross-traded securities, and the methods that will be used for determining closing price), and any other reasonably available information regarding the matter that the authorizing fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in section II(h) or section II(i), the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following the plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or

any new triggering events (as defined in Section IV(d) below) that may have been added to any existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h), or the time of the notice described in Section II(i).

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) below, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) below, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager (other than in the case of any assets of a Manager Plan) [11] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k), and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

(A) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(B) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days following the completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a), subject to the limitations described in Section III(b). However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III—General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, including records which identify:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; and (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of the Plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any Plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If in the course of seeking to inspect records maintained by a Manager pursuant to this exemption, any person described in paragraph (b)(1)(B) through (D) seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described in paragraph (b)(1)(B) through (D) shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV—Definitions

The following definitions apply for purposes of this exemption:

(a) *Index Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or

[11] However, proper disclosures must be made to, and written authorization must be made by, an appropriate fiduciary for the Manager Plan in order for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account.

(ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(b) *Model-Driven Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) below;

(2) Which either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(c) *Index*—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public securities exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) below; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) *Triggering Event*:

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to section II(k) the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) *Large Account*—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed (other than a Fund for which the Manager is a nondiscretionary trustee) or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund

which is exempt from taxation under section 501(a) of the Code; or

(3) An investment company registered under the Investment Company Act of 1940 (e.g., a mutual fund) other than an investment company advised or sponsored by the Manager;

provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) below) in connection with a portfolio restructuring program (as defined in Section IV(f)) for the Large Account.

(f) *Portfolio restructuring program*—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2), or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) *Trading adviser*—A person whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The person does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to such transactions.

(h) *Closing price*—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) *Manager*—A person who is:

(1) A bank or trust company, or any Affiliate thereof, as defined in Section IV(j) below, which is supervised by a state or federal agency; or,

(2) An investment adviser or any Affiliate thereof, as defined in Section IV(j) below, which is registered under the Investment Advisers Act of 1940.

(j) *Affiliate*—An ''affiliate'' of a Manager includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(k) *Control*—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) *Relative*—A ''relative'' is a person that is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(m) *Nondiscretionary trustee*—A plan trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, DC, this 6th day of February, 2002.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–3341 Filed 2–11–02; 8:45 am]

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To authorize the Secretary of the Interior to establish the Ronald Reagan Boyhood Home National Historic Site, and for other purposes. (Feb. 6, 2002; 116 Stat. 3)

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To require the valuation of nontribal interest ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes. (Feb. 6, 2002; 116 Stat. 6)

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