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WHEN: July 23, 2002—9:00 a.m. to noon

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RESERVATIONS: 202–523–4538; or
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 67, No. 136
Tuesday, July, 16, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket No. 01–073–2]

Untreated Citrus From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the plant quarantine safeguard regulations to remove Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also removing Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are taking these actions because neither port has been used for these purposes in over 20 years. These actions will update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Byrne, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5242.

SUPPLEMENTARY INFORMATION:

Background

The plant quarantine safeguard regulations in 7 CFR part 352 relieve restrictions for certain plants, plant products, plant pests, soil, and other products and articles that are classified as prohibited or restricted in other regulations in title 7, chapter III. Such plant products include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended; (2) unloading or landing for transshipment and exportation; (3) unloading or landing for transportation and exportation; or (4) unloading and entry at a port other than the port of arrival. Fruits and vegetables that are moved into the United States under these circumstances are subject to inspection and must be handled in accordance with conditions assigned under the safeguard regulations to prevent the introduction and spread of plant pests.

The regulations in § 352.30 address the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries. Those regulations have allowed untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at the ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX, and be moved, under certain conditions, by truck or railcar to seaports at Brownsville and Galveston, TX, for export by water to another country.

In a proposed rule published in the **Federal Register** on March 21, 2002 (67 FR 13103–13104, Docket No. 01–073–1), we proposed to amend the regulations by removing Brownsville and Hidalgo, TX, as ports of entry for untreated oranges, tangerines, and grapefruit from Mexico. In the same document, we also proposed to remove Brownsville, TX, as an authorized port for the exportation by water of such fruit.

We solicited comments concerning our proposal for 60 days ending May 20, 2002. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

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 under Executive Order 12866.

This rule amends the plant quarantine safeguard regulations by removing Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also removing Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are taking these actions because neither port has been used for these purposes in over 20 years. These actions will update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

Since the ports of Brownsville and Hidalgo, TX, have not been used for any shipments of untreated citrus from Mexico in over 20 years, this action will have no economic effect on any entity. Small entities located at or around the ports of Brownsville and Hidalgo, TX, will not be affected by this rule for the same reason that no economic entity of any size will be affected.

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 final 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 final 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 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 352 as follows:

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

1. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 7711–7714, 7731, 7734, and 8311; 21 U.S.C. 136 and 136a;31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.30 [Amended]

2. Section 352.30 is amended as follows:

a. In paragraph (b)(2), by removing the words ''Brownsville,'' and ''Hidalgo,''.

b. In paragraph (b)(3)(iii), by removing the words ''Brownsville or''.

c. In paragraph (c)(1), by removing the words ''Brownsville, or''.

d. In paragraph (c)(3), in the paragraph heading and in paragraphs (c)(3)(i) and (c)(3)(ii), by removing the words ''Brownsville or'' each time they appear.

Done in Washington, DC, this 10th day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17796 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Doc # FV–02–706 IFR]

Mushroom Promotion, Research, and Consumer Information Order; Reallocation of Mushroom Council Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on adjusting representation on the Mushroom Council (Council) to reflect shifts in production since the original producer regions were established and the increased volume of imports. These adjustments are required by the Mushroom Promotion, Research, and Consumer Information Order (Order) and would result in changing the number of Council members in three of the four producer regions and adding a fifth region to provide an importer position on the Council.

DATES: Effective date: July 17, 2002. Comments must be received by August 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at *http://www.ams.usda.gov/fv/rpdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: Deborah S. Simmons, Research and Promotion Branch, FV, AMS, USDA, Room 2535-S, Stop 0244, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free); e-mail to deborah.simmons@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1209]. The Order is authorized under the Mushroom Promotion, Research and Consumer Information Act of 1990 (Act) (7 U.S.C. 6101–6112).

Executive Orders 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers and importers to file a written petition with USDA if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a final decision on behalf of the Department. If the petitioner disagrees with the Judicial Officer's decision, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities that would be affected by this rule. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $5 million. Under these definitions, the majority of producers and importers that would be affected by this rule would be considered small entities. Producers and importers of less than 500,000 pounds or less of mushrooms for the fresh market are exempt from the Order.

According to the Council, there are approximately 137 non-exempt producers and 135 non-exempt importers who are eligible to serve on the Council.

The overall impact would be favorable for producers and importers because the producers and importers would have more equitable representation on the Council.

The addition of one importer position on the Council would mean two additional nominees. However, this rule would also reduce the number of producer nominees from 18 to 16. Therefore, there is no increase in overall burden, but only a change in the type of respondent under the Order.

As such, with regard to the information collection requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0505–0001. This rule, however, does add a new category of respondents—importers. The estimated burden for importer nominee information is 0.50 hours per response with two responses once every three years. This is the same burden that applies to producer nominees. Since producer nominees are reduced by this rule from 18 to 16, the estimated total annual burden on respondents associated with nominee background forms is 2.7 hours. The estimated cost of providing nomination information by eighteen persons eligible to be nominated to serve as members on the Council remains at $27.00 or $1.50 per person.

In terms of alternatives to this rule, this action reflects the volume thresholds and procedures that have been established previously under the

provisions of the Order for reallocation of Council membership.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Background

Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and expand markets for fresh mushrooms. The program is financed by an assessment of 0.21 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. The Order specifies that handlers are responsible for collecting and submitting the producer assessment to the Council, reporting their handling of mushrooms, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Council on mushrooms imported into the United States through the U.S. Customs Service.

The Order established a Council of up to nine members. For the purposes of establishing the Council, the United States was divided into four producer regions.

In addition, §§ 1209.30(a) and (c) of the Order state that importers shall be represented by a single, separate region (referred to as Region 5) when imports, on average (2 years), equal or exceed 35 million pounds of mushrooms annually. Currently, there is no Region 5.

Section 1209.30(d) of the Order provides that at least every five years, the Council should review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years. Based on the review, the Council would recommend reapportionment of the regions, or modification of the number of members from such regions, or both.

Section 1209.30(e) provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. Further, each producer region is entitled to an additional member for each 50 million pounds of annual production, on average, in excess of the initial 35 million pounds required to qualify for representation, until the nine seats on the Council are filled. Under the Order, ''on average'' reflects a rolling average of production or imports during the last two fiscal years.

The average production of pounds by producer region for the years 2000 and 2001 is 74.4 million pounds for Region 1; 297.2 million pounds for Region 2; 121.6 million pounds for Region 3, and 107.8 million pounds for Region 4. The average number of pounds imported for the years 2000 and 2001 is 39.3 million.

As a result, the Council recommended the following changes in Council membership:

Region	Average assessed pounds (in millions)	Members earned first 35 million pounds	Members earned next 50 million pounds	Members earned next 50 million pounds	Total members per region	Change in number of members
Region 1	74.4	1	.....	.....	1	−1
Region 2	297.2	1	1	1	3	0
Region 3	121.6	1	1	.....	2	−1
Region 4	107.8	1	1	.....	2	+1
Region 5	39.3	1	.....	.....	1	+1
Total	640.3	5	3	1	9	0

Therefore, pursuant to § 1209.30, a new § 1209.230 is added to the regulations under the Order to change the composition of the Council. Nominations based upon the changes made in this rule would be received for the term of office that begins on January 1, 2003.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule should be in place as soon as possible so that the nomination process may be conducted taking into account the changes that appear in this rule. The new term of office begins on January 1, 2003. In addition and for the same reasons, a 30-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mushroom promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1209, Chapter XI of Title 7 is amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

2. A new § 1209.230 is added to read as follows:

§ 1209.230 Reallocation of council members.

Pursuant to § 1209.30 of the Order, the regions and their number of members on the Council shall be as follows:

Region 1: Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, New Hampshire, North Dakota, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin, and Wyoming—1 Producer Member.

Region 2: Delaware, Maryland, New Jersey, Pennsylvania, the District of Columbia, West Virginia, and Virginia—3 Producer Members.

Region 3: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington—2 Producer Members.

Region 4: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, the Commonwealth of Puerto Rico, South Carolina, Tennessee, and Texas—2 Producer Members.

Region 5:—1 Importer Member.

Dated: July 10, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–17764 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–127–AD; Amendment 39–12820; AD 2002–14–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900 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 Boeing Model 737–600, –700, –800, and –900 series airplanes. This action requires measuring the electrical voltage at the circuit breaker for a certain pitot heater to determine if the pitot heater is connected to the correct power supply bus, and performing corrective action, if necessary. This action is necessary to prevent ice from blocking the pitot tube that provides airspeed data to the captain. Such ice blockage could lead to the flightcrew receiving incorrect airspeed data, which could result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect. This action is intended to address the identified unsafe condition.

DATES: Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–127–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2890; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, on certain Boeing Model 737–600, –700, –800, and –900 series airplanes, the captain's indicated airspeed sensor and the captain's display unit may give inconsistent airspeed data to the flightcrew. Investigation of two incidents has revealed that, during production, the circuit breaker wire for the captain's pitot heater was connected to the 28-volt alternating current (AC) power supply bus, instead of the 115-volt AC standby power supply bus. The 28-volt power supply bus does not supply sufficient electrical power to heat the captain's pitot probe and keep it free of ice. This condition, if not corrected, could cause ice blockage of the captain's pitot probe, leading to the flightcrew receiving incorrect airspeed data, which could result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002, which describes procedures for measuring the electrical voltage at the circuit breaker for the captain's pitot heater to determine if the pitot heater is connected to the correct power supply bus, and performing corrective action, if necessary. The corrective action involves connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus, performing a test to ensure that the pitot heater system operates correctly, and repeating the measurement of the electrical voltage at the circuit breaker for the captain's pitot heater. If the test fails or the electrical voltage is still incorrect, the service bulletin specifies to troubleshoot the problem and repeat the corrective actions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent ice from blocking the pitot tube that provides airspeed data to the captain, which could lead to the flightcrew receiving incorrect airspeed data and result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Service Information and This AD

While the service bulletin specifies that no further action is necessary if the voltage measurement of the circuit breaker for the captain's pitot heater is 115 volts AC, paragraph (a)(1) of this AD states that, if the measurement is between 100 and 122 volts AC, no further action is required by this AD. The range of 100 to 122 volts AC specified in this AD accounts for normal variances that may be encountered during the voltage measurement.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–14–20 Boeing: Amendment 39–12820. Docket 2002–NM–1AD.

Applicability: Model 737–600, –700, –800, and –900 series airplanes; as listed in Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002; 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 ice from blocking the pitot tube that provides airspeed data to the flightcrew, which could lead to the flightcrew receiving incorrect airspeed data, and result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect, accomplish the following:

Measurement of Voltage and Corrective Actions

(a) Within 60 days after the effective date of this AD, measure the electrical voltage at the circuit breaker for the captain's pitot heater to determine if the pitot heater is connected to the correct power supply bus, per Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002.

(1) If the measurement is 100 to 122 volts alternating current (AC): No further action is required by this AD.

(2) If the measurement is not 100 to 122 volts AC: Before further flight, perform all actions associated with connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus (including performing a test to ensure that the pitot heater system operates correctly, repeating the measurement of the electrical voltage at the circuit breaker for the captain's pitot heater, and troubleshooting and correcting the wire connections until the test and measurement are successful), per the service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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

(e) This amendment becomes effective on July 31, 2002.

Issued in Renton, Washington, on July 8, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17548 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–44–AD; Amendment 39–12822; AD 2002–14–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters ''AT'' and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters ''AT'' and a number of 299 or lower. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and replace defective MLG assembly bolts that have an improper cadmium plating, which could cause hydrogen embrittlement and bolt failure. Such failure could lead to MLG collapse during landing.

DATES: This AD becomes effective on August 29, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 29, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–44–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 Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a manufacturing defect, certain bolts on the main landing gear (MLG) assembly may be defective. The problem is caused by an improper cadmium process applied to the high strength steel part, which can cause hydrogen embrittlement and subsequent failure of the bolt.

The defective bolts were initially installed on MLG assemblies that have a serial number beginning with the letters ''AM''. Each bolt in the defective lot incorporates the letters ''AT'' and a number of 299 or lower.

What Is the Potential Impact if FAA Took No Action?

If not corrected, such failure could lead to MLG collapse during landing.

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 Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 1, 2002 (67 FR 9420). The NPRM proposed to require you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters ''AT'' and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters ''AT'' and a number of 299 or lower.

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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 16 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 inspection and replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Manufacturer will pay for workhours	Parts will be provided at no cost to the owners/operators of the affected aircraft.	None	None.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is ''within the next 30 days after the effective date of this AD''.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-service (TIS)?

Although malfunction of the main landing gear is unsafe during flight, the condition is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

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:

2002–14–22—Pilatus Aircraft Ltd.: Amendment 39–12822; Docket No. 2001–CE–44–AD.

(a) What airplanes are affected by this AD? This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1: Pilatus may have installed the affected bolts on the following airplanes at manufacture. All portions of this AD apply to these airplanes:

Model	Serial Nos.
PC–12 and PC–12/45.	349, 352, 357, 359, 362 through 365, 367, 369, 371, 375, 377, 380, 384, 385, 388, 390, 391, 393, 401, and 409.

(2) Group 2: The affected bolts could be installed through spare replacement on any of the following model airplanes. Paragraphs (d)(3) and (d)(4) of this AD apply to these airplanes:

Model	Serial Nos.
PC–12 and PC–12/45	All serial numbers

(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 replace defective main landing gear (MLG) assembly bolts that have an improper cadmium plating, which could cause hydrogen embrittlement and bolt failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, accomplish all actions for Group 1 airplanes, and accomplish paragraphs (d)(3) and (d)(4) of this AD for Group 2 airplanes:

Actions	Compliance	Procedures
(1) Inspect the left and right main landing gear (MLG) assembly for the existence of a bold, part number (P/N) 532.10.12.077, that has a serial number (S/N) with both the letters ''AT'' and a number of 299 or lower. (i) If the above referenced bolts are not installed, no further action is required. (ii) If the above referenced bolts are installed, replace each bolt with an FAA-approved bolt that does not have a S/N with both the letters ''AT'' and a number of 299 or lower.	Inspect within the next 30 days after August 29, 2002 (the effective date of this AD). Prior to further flight, replace bolts found during the inspection required in paragraph (d)(1) of this AD.	Pilatus PC–12 Service bulletin No. 32–012, dated October 18, 2001, provides information about these actions.
(2) Send the removed bolts to Pilatus Aircraft Ltd. so the bolts cannot be reused and report the results of the inspection (positive or negative) to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bolts or within 10 days after August 29, 2002 (the effective date of this AD), whichever occurs later.	Send the removed bolts to Pilatus Aircraft Ltd. at the address in paragraph (h) of this AD, and send the report to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.
(3) Do not install any bolt, P/N 532.10.12.077, on any MLG assembly that has a S/N with bolt the letters ''AT'' and a number of 299 or lower.	As of August 29, 2002 (the effective date of this AD).	Not Applicable.

Actions	Compliance	Procedures
(4) If you have already accomplished the actions specified in Pilatus PC–12 Service Bulletin No. 32–012, dated October 18, 2001, send a report to the FAA at the address in paragraph (f) of this AD, stating if one of the affected bolts was replaced and returned to Pilatus.	Within the next 30 days after August 29, 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 Pilatus PC–12 Service Bulletin No. 32–012, dated October 18, 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 may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. 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.

(i) *When does this amendment become effective?* This amendment becomes effective on August 29, 2002.

Issued in Kansas City, Missouri, on July 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17602 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 2001–ASW–18]

Establishment of Class D Airspace; Stillwater Municipal Airport, Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This document establishes Class D Airspace at Stillwater Municipal Airport, Stillwater, OK. Establishing an Air Traffic Control Tower at Stillwater Municipal Airport, Stillwater, OK, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Stillwater Municipal Airport, Stillwater, OK.

EFFECTIVE DATE: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2001–ASW–18, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, Telephone 817–222–5597.

SUPPLEMENTARY INFORMATION: This document establishes Class D Airspace at Stillwater Municipal Airport, Stillwater, OK. Establishing an Air Traffic Control Tower at Stillwater Municipal Airport, Stillwater, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Stillwater Municipal Airport, Stillwater, OK.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9J dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final

rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, 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 action 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 No. 2001–ASW–18.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW OK D Stillwater Municipal Airport, Stillwater, OK [New]

Stillwater Municipal Airport, OK
(Lat. 36°09′37″ N., long. 97°05′09′ W.)

That airspace extending upward from the surface to but not including 3,500 feet MSL within a 4-mile radius of Stillwater Municipal Airport. This Class D airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Fort Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17735 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2002–ASW–1]

Establishment of Class E Airspace; Scott Field Airport, Mangum, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This document establishes Class E airspace at Scott Field Airport, Mangum, OK. The development of an area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP), to Scott Field Airport, Mangum, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Scott Field Airport, Mangum, OK.

DATES: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2002–ASW–1, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5597.

SUPPLEMENTARY INFORMATION: This document establishes Class E airspace at Scott Field Airport, Mangum, OK. The development of an area navigation (RNAV) global positioning system (GPS)

standard instrument approach procedure (SIAP), to Scott Field Airport, Mangum, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR § 71.1.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, 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 action 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 No. 2002–ASW–1.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J. *Airspace Designations and Reporting Points*, dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Scott Field Airport, Mangum, OK [New]

Scott Field Airport, OK
(Lat. 34°53′33″N., long. 99°31′42″W.)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of Scott Field Airport.

* * * * *

Issued in Fort Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17736 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2002–ASW–2]

Revision of Class E Airspace; Springhill, LA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revised the Class E airspace at Springhill, LA. The development of a Nondirectional Radio Beam (NDB) Standard Instrument Approach Procedure (SIAP), at Springhill Airport, Springhill, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Springhill Airport, Springhill, LA.

DATES: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2002–ASW–2, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Springhill, LA. The development of a NDB SIAP, at Springhill Airport, Springhill, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Springhill Airport, Springhill, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, 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 action 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 No. 2002–ASW–2.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects of 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 will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact; positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103; 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Springhill, LA [Revised]

Springhill Airport, LA
(Lat. 32°58′59″ N., long. 93°24′39″ W.)
Springhill NDB
(Lat. 32°55′13″ N., long. 93°24′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile

radius of Springhill Airport and within 3.2 miles each side of the 180° bearing of the Springhill NDB extending from the 6.4-mile radius to 10.9 miles South of the airport.

* * * * *

Issued in Forth Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17737 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 02–36]

RIN 1515–AD09

Elimination of the Tariff-Rate Quotas on Imported Lamb Meat

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The tariff-rate quota imposed on imported lamb meat products has been eliminated by Presidential Proclamation 7502 of November 14, 2001. Accordingly, this document amends the Customs Regulations by removing the regulation requiring that lamb meat subject to the tariff-rate quota be covered by an export certificate in order to obtain the in-quota rate of duty.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Fitzpatrick, Office of Field Operations, 202–927–5385.

SUPPLEMENTARY INFORMATION:

Background

Presidential Proclamation 7208 of July 7, 1999, as modified by Presidential Proclamation 7214 of July 30, 1999, imposed a temporary tariff-rate quota (TRQ) effective July 22, 1999, on lamb meat imports provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20, Harmonized Tariff Schedule of the United States (HTSUS), in order to facilitate the domestic industry's adjustment to import competition. Under Presidential Proclamation 7214, the United States Trade Representative (USTR) was authorized to administer the TRQ on the lamb meat.

Pursuant to Presidential Proclamations 7208 and 7214 and the implementing regulations of the USTR (15 CFR part 2014), the United States Customs Service issued § 132.16 of the Customs Regulations (19 CFR 132.16) which required that lamb meat subject to the TRQ be covered under certain circumstances by an export certificate in order to obtain the in-quota rate of duty. Also, an appropriate reference to the export-certificate requirement of § 132.16 was included in the appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), which lists those records that are required for the entry of imported merchandise. (*See* Customs interim and final rules in this matter published in the **Federal Register** on December 2, 1999, and December 13, 2000, respectively (64 FR 67482 and 65 FR 77816).)

The TRQ imposed on the lamb meat has now been eliminated by Presidential Proclamation 7502 of November 14, 2001. With the elimination of this TRQ, there is therefore no longer any need for the regulation requiring that an export certificate cover the lamb meat in order to entitle the lamb meat to the in-quota rate of duty under the TRQ. Accordingly, § 132.16 is being removed from the Customs Regulations as well as the reference to § 132.16 in the Appendix to Part 163.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely reflect Presidential Proclamation 7502 of November 14, 2001, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows and the relevant specific authority citation for § 132.16 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1623,1624. §§ 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

2. Part 132 is amended by removing and reserving § 132.16.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the Appendix to part 163, under heading IV, the list of documents/records or information required for entry of special categories of merchandise is amended by removing the listing ''§§ 132.15 through 132.17 Export certificates, respectively, for beef, lamb meat, or sugar-containing products subject to tariff-rate quota.'' and by adding the following listing in its place:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§§ 132.15, 132.17 Export certificates, respectively, for beef or sugar-containing products subject to tariff-rate quota.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: July 10, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–17780 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122–3; FRL–7235–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Indiana Department of Environmental Management (IDEM) submitted a revised opacity rule to the EPA on October 21, 1999, as a requested revision to its State Implementation Plan (SIP). The revisions amend portions of Indiana's opacity rule concerning the start-up and shutdown of utility boilers, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible emission readings and continuous opacity monitor (COM) data. The proposed rule and direct final rule were published in the November 30, 2001 **Federal Register**. After EPA received adverse comments, a direct final rule withdrawal was published on January 28, 2002. In this action, the EPA responds to the adverse comments and takes final action approving Indiana's SIP revision request.

DATES: This rule is effective on August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

Table of Contents

I. What Is EPA Approving?

EPA is approving revisions to Indiana's opacity rule. IDEM submitted the revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the start-up and shutdown of utility boilers, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits (AOLs), and conflicts between visible emission readings and COM data. The boiler start-up and shutdown revisions satisfy the Clean Air Act requirements and the EPA policy on such provisions. Other rule revisions aid the enforcement of the opacity rules.

II. What Are the Changes From the Current Rules?

The State's submission revises several sections of Indiana's opacity rule, 326 IAC Article 5. The revisions involve limited exemptions from opacity limits during start-up and shutdown of utility boilers equipped with electrostatic precipitators (ESPs), conflicts between COM data and visible emission readings, clarification of averaging periods, temporary AOLs for non-boiler sources, and exemptions for sources with consolidated Title V permit limits.

A. Provisions for Utility Boilers

The major new component of these revisions allows certain utility boilers to obtain limited exemptions from opacity limits during start-up and shutdown periods in their federally enforceable operating permits. The exemption cannot be longer and will generally be shorter than an upper bound duration established in the rule, 326 IAC 5–1–3(e). This provision is for power plants using coal-fired boilers and ESPs.

B. Conflicts Between COM Data and Visual Opacity Readings

The current SIP version states that if there is a conflict between opacity readings recorded by a COM and those taken by a human observer, the COM data will prevail. EPA requested this rule be revised to make enforcement easier. Indiana revised the rule, 326 IAC 5–1–4(b), to state that data from either a COM or a human observer may be used to show a violation of opacity limits. The basis for this change is that there are certain instances in which opacity readings from an observer may be more accurate than those from a COM. For example, sulfur in a high-temperature gas stream exists in a gaseous state inside a smokestack and would not register on a COM. Once the gas stream comes in contact with the atmosphere, however, chemical reactions and cooling occur, causing visible emissions which can be seen by an observer.

C. Clarification of Averaging Periods

The current version of this rule, 326 IAC 5–1–2, states that the limits are not to be exceeded ''in 24 consecutive readings'' with readings taken every 15 seconds. The revised rule states that the limits are not to be exceeded in ''any one 6-minute averaging period.'' The limits themselves are unchanged. Indiana made a similar clarification of time averaging periods for temporary AOLs. Under 326 IAC 5–1–3(a) and (b), Indiana may provide temporary AOLs to certain sources for start-up, shutdown, and ash removal. Both of these revisions improve the ability to enforce the rule by making it clearer and more consistent with the opacity test method. The test method (40 CFR part 60, appendix A, Method 9) calls for opacity readings to be taken by an observer every 15 seconds, and for these readings to be averaged on a 6-minute basis.

D. Temporary Alternate Opacity Limitations for Non-Boiler Sources

New provisions in 326 IAC 5–1–3(c) authorize Indiana to grant temporary AOLs to non-boiler sources. These sources now may apply for a short-term opacity AOL for start-up, shutdown, and ash removal situations. IDEM will submit any temporary AOLs to the EPA as site-specific SIP revisions. EPA will review them for compliance with Clean Air Act requirements and EPA policy. This rule revision does not directly affect any SIP emissions limits.

E. Opacity Limit Exemptions for Title V Sources

Indiana's rule had provided an exemption from opacity limits for any source with a specific opacity limit in a Title V permit. The rule, 326 IAC 5–1–1, allowed sources to consolidate multiple limits into a single limit in the Title V permit. This is known as ''streamlining.'' The EPA had informed Indiana that the exemption was inappropriate because it had impermissibly suggested that Title V permits could create SIP exemptions. As a result, Indiana removed the exemption from 326 IAC 5–1–1.

III. What Is EPA's Analysis of the Supporting Materials?

The EPA used its September 20, 1999, memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown'' to evaluate the

exemptions provisions in 326 IAC 5–1–3(e). To be approved, the provisions must meet the seven requirements in this memorandum. The requirements are:

1. The revision must be limited to specific, narrowly-defined source categories using specific control strategies;

2. Use of the control strategy for this source category must be technically infeasible during start-up or shutdown periods;

3. The frequency and duration of operation in startup or shutdown mode must be minimized;

4. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during start-up and shutdown;

5. All possible steps must be taken to minimize the impact of emissions during start-up and shutdown on ambient air quality;

6. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions; and

7. The owner or operator's actions during start-up and shutdown periods must be documented by properly signed, concurrent operating logs, or other relevant evidence.

Indiana has met all seven requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during start-up and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV below.

In addition to the supporting material for the exemptions in 326 IAC 5–1–3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5–1–2 clarifies the averaging period for opacity level readings. The averaging period is now ''any one (1) six (6) minute averaging period.'' The former limit of ''twenty-four (24) consecutive readings'' (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5–1–3 (a), and (b) which provide sources short-term temporary AOLs for start-up, shutdown, and ash blowing. An alternative 60 percent opacity limit section (a) will now apply for up to ''two (2) six (6) minute averaging periods'' in any twenty-four hour period. Previously, the limit applied for ''twelve (12) continuous minutes.'' Section (b) similarly changes a ''six (6) continuous minutes'' to ''one (1) six (6) minute'' averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5–1–3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5–1–3 (a) and (b). Language in 326 IAC 5–1–1 allowing an opacity limits exemption for any source with a specific opacity limit in a Title V permit was removed. This exemption was removed because it had impermissibly suggested that Title V permits could create SIP exemptions.

Indiana held two public hearings on the opacity rule revisions, giving interested parties an opportunity to comment. It held the first public hearing on December 3, 1997 and the second on June 3, 1998. Transcripts of the public hearing are included in the submittal. Representatives from electric utilities, a university, and a cement company made comments at the hearings. These comments were generally supportive of the rule revisions except for two commenters who expressed concern about 326 IAC 5–1–4(b). This section addresses conflicts between visual opacity readings and those taken with a COM. Indiana further revised this section in response to the comments. Section 5–1–4(b) now states that either visual or COM readings may be used to support an enforcement action. The source may also use COM readings and other relevant information to refute the State's findings.

IV. What Are the Environmental Effects of These Alternate Limits in 326 IAC 5–1–3?

Indiana submitted a modeling analysis aimed at assessing the worst-case impact of the limited exemption from opacity limits in 326 IAC 5–1–3(e). This modeling analysis addresses the fourth requirement of EPA's September 20, 1999 policy. Of the 22 eligible facilities, IDEM modeled PSI Energy's power plant in Edwardsport because it has the shortest stacks (183 feet) and the most significant impact from building downwash. A conservative emissions rate was calculated by estimating uncontrolled emissions under full-load operating conditions for a conservative eight-hour start-up period. IDEM developed a conservative estimate of background concentrations in the area of the Edwardsport plant. It showed that application of this background value to the other relevant power plants (none of which are in the Lake County non-attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data to model estimated concentrations of particles of nominal aerodynamic diameter of 10 μm or less (PM–10). The Edwardsport modeling results show an ambient PM–10 concentration (including background) of 98.6 $\mu g/m^3$, well below the 24-hour average PM–10 standard of 150 $\mu g/m^3$. Thus, IDEM has demonstrated that the start-up and shutdown exemption in 326 IAC 5–1–3 is not expected to cause a violation of the PM–10 air quality standards.

The EPA further examined whether air quality problems could arise from multiple sources operating in start-up or shutdown mode simultaneously. With one exception, the relevant power plants are isolated from each other. The one exception is for two facilities in Warrick County. Because the two facilities are about 3 kilometers apart, and because these facilities have significantly higher stacks than the Edwardsport facility, EPA is satisfied that simultaneous operation in start-up or shutdown mode at these two facilities will not cause air quality problems. In addition, because operation in start-up or shutdown mode (particularly eight hours of such operation) is infrequent, simultaneous operation in these modes at more than one source is unlikely. Consequently, EPA believes that granting the exemption requested by Indiana will not jeopardize continued attainment of the air quality standards.

V. What Are EPA's Responses to the Comments on This SIP Revision?

The Indiana Electric Utility Air Work Group submitted a comment supporting the (visual versus monitor) opacity readings revision. EPA acknowledges this comment. EPA has also received ten comments on the proposed rulemaking for Indiana's opacity rule from a Wyoming citizen. The following summarizes the comments and gives the EPA's response:

Comment 1: EPA should not approve an exemption from Indiana's opacity limits because the limits are already quite lax. Sources located in non-attainment areas are subject to a 30 percent opacity limit (except for facilities located in Lake County which are subject to a 20 percent opacity limit), with an exemption allowed for a cumulative total of up to fifteen minutes in a 6-hour period during which opacity cannot exceed 60 percent, and sources elsewhere are subject to a 40 percent opacity limit.

Response 1: Although the commenter considers Indiana's opacity limits lax, in

fact Indiana has demonstrated to EPA that at least some of these sources cannot meet these limits during start-up and shutdown. The infeasibility of meeting the limits led Indiana to pursue an exemption from its normal opacity limits during these periods in accordance with EPA policy. First, the 30 percent opacity limit applies to areas that were previously designated non-attainment for total suspended particulate matter. Only Lake County is designated non-attainment for the current, PM–10 based, particulate matter standard.

More importantly, the interpretation of the 60 percent opacity rules as an ''exemption'' is incorrect. This comment refers to limits in 326 IAC 5–1–2(1)(B) and 326 IAC 5–1–2(2)(C) which state that opacity shall not exceed 60 percent for a cumulative total of 15 minutes in a 6-hour period. These 60 percent limits are in addition to the general 6-minute average opacity limits in 326 IAC 5–1–2 (40 percent, 30 percent, or 20 percent, depending on the location of the source), and are meant to prevent repeated, short-duration high-opacity emissions which may not last long enough to cause a violation of a 6-minute average opacity limit. There is no language in 326 IAC 5–1–2(1)(B) or (2)(C) which exempts sources from other applicable opacity limits. Therefore, it would be a violation of the rule if opacity were to exceed *either* the appropriate 6-minute average opacity limit or the 60 percent 15-minute cumulative limit.

Comment 2: While 326 IAC 5–1–3(d) does require the submittal of a source-specific SIP revision to the EPA for these alternative opacity exemptions, EPA's approval of the procedures for alternative opacity limits in 326 IAC 5–1–3(d) could be construed as a guaranteed approval of the SIP revision as long as the source and the State comply with the requirements of this State rule in crafting alternative opacity limits, especially considering that Indiana's rule does not require the source-specific SIP revision to be approved by EPA before the source can be exempt from SIP opacity requirements. Thus, this provision must not be approved as part of the SIP. Instead, the EPA should simply review and approve or disapprove, as appropriate, each source-specific SIP revision as submitted.

Response 2: We disagree with this interpretation of the State rule. EPA approval of 326 IAC 5–1–3(d) does not guarantee EPA approval of future SIP revisions requesting alternative opacity limits under this subsection. 326 IAC 5–1–3(d) merely lays out the conditions and procedures under which Indiana would accept such revisions. If such a revision is approved by Indiana, the State must submit it to the EPA as a site-specific SIP revision. The EPA will review any such submittals on their own merits under Clean Air Act requirements and take appropriate action.

Alternative opacity limits under Section 326 IAC 5–1–3(d) do not become effective unless and until the EPA approves them as SIP revisions. 326 IAC 5–1–7 states that: ''Exemptions given or provisions granted by the commissioner in accordance with section * * * 3(d) * * * of this rule shall be submitted to the U.S. EPA as a SIP revision and shall not become effective until approved as a SIP revision by the U.S. EPA.''

Comment 3: EPA's proposed approval of these revisions is in violation of the requirements of the Clean Air Act and EPA's September 20, 1999 policy. First, it is apparent from the language of 326 IAC 5–1–3(e) that Indiana has been allowing, without EPA approval, exemptions from the SIP's opacity requirements in operating permits (state operating permits as well as Part 70 operating permits). Such exemptions are illegal, as operating permits cannot allow a source to violate the SIP and such permits cannot be used to revise a SIP unilaterally. The commenter urges EPA to investigate Indiana's implementation of its permitting program to determine if the state is allowing illegal revisions to other requirements of the SIP as well as the SIP opacity limits through the issuance of operating permits. In addition, EPA's approval of the provision without discussion of the underlying change in specific SIP requirements is clearly improper.

Response 3: The 22 facilities eligible for start-up/shutdown opacity limit exemptions under 326 IAC 5–1–3(e) currently have opacity limit exemptions in their State operating permits. However, since these State operating permits are not federally enforceable, they do not create SIP exemptions. Indiana cannot issue any Title V permits to these 22 facilities which contain start-up/shutdown exemptions until 326 IAC 5–1–3(e) is incorporated into the SIP by federal rulemaking action.

If EPA approves this provision, the State is bound by the provisions in 326 IAC 5–1–3(e) to establish limits which, among other things, ''limit the duration and extent of excess emissions to the greatest degree practicable,'' and ''minimize the duration and extent of excess emissions.'' Indiana has further indicated, in an October 10, 2001 letter, that it understands that EPA approval of 326 IAC 5–1–3(e) will not make the pre-existing opacity exemptions in the State permits federally enforceable.

Comment 4: Indiana's proposed SIP revision does not comply with the requirements of EPA's September 20, 1999 policy. EPA's policy states that start-ups and shutdowns are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. Thus, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emissions limitations during such periods.

Response 4: The policy continues: ''For some source categories, given the types of control technologies available, there may exist short periods of emissions during start-up and shutdown when, despite the best efforts regarding planning, design, and operating procedures, the otherwise applicable emissions limitation cannot be met.'' The policy also states, ''it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during narrowly defined start-up and shutdown periods.''

The start-up/shutdown exemptions in 326 IAC 5–1–3(e) only apply to coal-fired utility boilers equipped with electrostatic precipitators (ESPs). The rule also permits similar exemptions for boilers equipped with baghouses at sources with a preexisting permit with such an exemption. However, no boilers equipped with baghouses have such a permit, so no boilers with baghouses are eligible for the exemption. This is a specific source category with a certain type of control device that Indiana has determined is technically infeasible to operate in low temperature exhaust streams. Thus, approval of this SIP revision is appropriate under EPA policy.

Comment 5: EPA's policy does allow for narrowly-tailored exemptions from SIP limits for some source categories, ''given the types of control technologies available,'' that cannot meet SIP limits despite best efforts regarding planning, design, and operating procedures. Regarding this SIP revision, Indiana has claimed those coal-fired utility boilers equipped with ESPs cannot meet the existing state opacity limits, which already are quite lenient and already allow greater levels of opacity during periods of start-up and shutdown. Although EPA has stated in its SIP approval that these exemptions only

apply to coal-fired boilers using ESPs, the State rule does not limit the exemption to coal-fired boilers, and it does not limit the exemption to facilities using only ESPs for control. In fact, the exemptions are even allowed for facilities equipped with baghouses and such facilities should have no problems meeting Indiana's lax opacity limits, unless such facilities are bypassing the control equipment or not maintaining and operating the source in accordance with good air pollution practices for minimizing emissions. Thus, the State's rule is not limited to specific, narrowly-defined source categories.

Response 5: 326 IAC 5–1–3(e) states that if a source has different start-up and shutdown conditions from those in subsections (a) or (b) in a valid operating permit on the effective date of this rule (November 8, 1998), the source will be eligible for the 5–1–3(e) start-up/shutdown exemption. In an October 10, 2001, letter, Indiana states that the only facilities having such permits as of November 8, 1998, are a group of 22 power plants using coal-fired boilers equipped with ESPs. Other sources, such as facilities equipped with baghouses, are not eligible for this exemption under the explicit language in 5–1–3(e). The EPA has determined that coal-fired utility boilers equipped with an electrostatic precipitator meet the policy requirement for a narrowly-defined source category.

Comment 6: Indiana did not provide any justification to show that the applicable opacity limits cannot be met for sources other than coal-fired boilers equipped with ESPs, nor did Indiana provide adequate justification to show that the existing opacity requirements could not be met, given the types of control technologies available, at coal-fired boilers equipped with ESPs. Further, the State did not adequately show that the use of ESPs during start-up and shutdown was technically infeasible.

Response 6: The start-up/shutdown exemptions apply only to select facilities with coal-fired utility boilers controlled with ESPs, so there is no need to justify the technical infeasibility for other sources. Indiana's October 10, 2001, letter provides technical justification from Cinergy, Hoosier Energy, NIPSCO, and Indianapolis Power & Light. This technical justification is applicable for all 22 facilities seeking start-up/shutdown exemptions. Energizing an ESP before the flue gas temperature is above the sulfuric acid dew point can result in damage to the equipment. Condensation of sulfuric acid in the ESP may cause corrosion. It may also condense on the dust in the unit causing hard deposits which reduce the PM–10 collection efficiency of the ESP. During the ignition of a coal-fired boiler, there is a risk of a fire or an explosion if the ESP is energized. Normal sparking can ignite any combustible gases in the unit.

Comment 7: The State must be required to show that its minimum criteria for exemptions in 326 IAC 5–1–3(e)(2) will minimize the frequency and duration of excess emissions during start-up and shutdown to the maximum extent practicable. The State rule does not require the facility to, at all times, be operated in a manner consistent with good practice for minimizing emissions. The State rule also does not require the source to demonstrate that all possible steps were taken to minimize the impact of emissions during start-up and shutdown on air quality. In addition, the State rule does not require the owner or operator's action during start-up and shutdown to be properly documented.

Response 7: In fact, language in the State rule does satisfy the September 20, 1999 policy requirement. 326 IAC 5–1–3(e) states that each facility must submit ''documentation including, but not limited to, historical opacity information during periods of start-up and shutdown and other pertinent information and proposed permit conditions that limit the duration and extent of excess emissions to the greatest practicable extent. The commissioner shall incorporate permit conditions that are necessary for safe and proper operation of equipment and minimize the duration and extent of excess emissions. Such conditions shall require the source to keep records of times of start-ups, shutdowns, and ash removals and may be more stringent than the operating permit conditions in effect as of the effective date of this rule.'' The rule was effective on November 8, 1998. In the October 10, 2001 letter, Indiana adds, ''we anticipate tightening the allowable time periods and requirements for these limitations as we develop the Title V permits for these sources, based on historical information about emissions during these periods.'' This will further minimize the frequency and duration of excess emissions.

Comment 8: Start-up/shutdown conditions under 326 IAC 5–1–3(e) ''* * * appear to be allowed for facilities located in non-attainment areas.''

Response 8: This is not the case. The first sentence of 326 IAC 5–1–3(e) explicitly states that '' . . . this section applies to sources existing on the effective date of this rule located in counties other than Lake County.'' As previously stated, the only PM–10 non-attainment area in Indiana is located in Lake County.

Comment 9: The State's modeling analysis does not adequately demonstrate that the SIP relaxation will not result in a violation of the National Ambient Air Quality Standards (NAAQS). The State claimed that this exemption would apply to 22 facilities, but modeled only one facility. The State's modeling analysis did not address whether the facility modeled had the highest emission rate. The analysis also assumed that the topography, meteorological conditions, distance from stack to fence line, background concentrations, and locations of other nearby sources were identical to the source modeled. The State should have modeled every source with an exemption from the SIP opacity limits with the specific conditions applicable to each facility to truly examine worst case ambient impacts. Thus, this analysis is fatally flawed and is not sufficient to demonstrate that the SIP revision won't allow for a violation of the NAAQS.

Response 9: Indiana used a worst-case approach to assess whether the exemptions its rules allow would cause violations of the NAAQS near any of the eligible facilities. Indiana sought to model a scenario that would show impacts equal to or greater than the impacts that would be expected at any of the 22 facilities eligible for these exemptions. This approach seeks to avoid unnecessary and overly burdensome analyses whose results (i.e., attainment) can be deduced from modeling a single worst-case scenario. The question, then, is whether Indiana has in fact modeled a worst-case scenario.

A critical element of the modeled scenario is stack height. Indiana modeled the facility with the shortest stack of the 22 eligible facilities. Indeed, the modeled stack is short enough to have plume downwash, which causes much greater impacts than would occur otherwise. EPA expects this factor to have more effect on plant impacts than the emission differences among these facilities, so that start-up and shutdown at the modeled facility should cause higher concentrations than they would at the other 21 eligible facilities.

The commenter identifies several other parameters that can affect plant impacts. However, none of these parameters is likely to affect plant impacts sufficiently to alter which plant has the worst-case impact. Meteorological variations from day to day obviously create substantial day to

day concentration variations, but the question here is whether different locations in Indiana could be expected to have significantly different ensembles of meteorological conditions. EPA believes that the climatology is sufficiently similar across Indiana that an analysis for the one location analyzed by the State is sufficient. Distance from stack to plant fence line can be important for low-level releases, but the peak impacts from the sources involved are generally more than a kilometer from the source, i.e., well beyond plant fence line. Therefore, differences in fence line distances will likely not affect peak concentrations. Terrain can significantly affect concentrations, particularly if the terrain rises above the top of the stack. However, the stacks of the sources involved are in most cases very tall. They are well above both plant grounds and the highest nearby hilltops. EPA believes that Indiana has modeled the plant with stacks that are not just the shortest but in fact the least elevation above nearby terrain.

The commenter further expresses concern about variations in background concentrations. EPA examined monitoring data throughout the State. Sources in Lake County are not eligible for the exemptions at issue, and so background concentrations there are not relevant. In the rest of the State, the measured background concentrations are comparable to the background concentrations that Indiana used. Whereas Lake County has a complicated mix of sources, making it difficult to assess background concentrations, the rest of the State has fewer sources, such that the ''background'' impact of other sources can be reasonably represented with available monitoring data. As a result, EPA concludes that the addition of the plant impacts modeled by Indiana to concentrations elsewhere in the State, other than Lake County, would not yield violations of the air quality standards. More generally, EPA concludes that Indiana has modeled a worst-case scenario. Indiana's modeling showed a 24-hour concentration for this scenario of 98.6 $\mu g/m^3$, well below the air quality standard of 150 $\mu g/m^3$. EPA therefore concludes that Indiana's modeling suffices to demonstrate that the exemptions which Indiana's rule authorizes would not allow violations of air quality standards.

Comment 10: The State has not demonstrated that the SIP relaxation will not adversely impact the Prevention of Significant Deterioration (PSD) increments.

Response 10: Under 40 CFR 51.166 (a)(2), a demonstration that a SIP revision will not cause or contribute to a violation of the applicable PSD increments is required, ''[i]f a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration.'' Increment violation can only occur if a source or sources increase actual emissions above baseline levels. EPA views the emissions associated with start-up and shutdown as emissions that were unavoidably present during the baseline period. While SIP relaxations ordinary allow an increase in emissions, this SIP revision will not yield any increase in emissions above baseline levels and some sources will actually require a decrease in emissions. Consequently, this SIP revision will not consume any PSD increment and a PSD increment consumption analysis is not required.

VI. What Rulemaking Action Is the EPA Taking?

After considering the comments received, EPA continues to believe that Indiana's rule revisions are acceptable, as proposed in the November 30, 2001 proposed rule (66 FR 59757). Therefore, the EPA is approving revisions to Indiana's opacity rule. The revised regulation address provisions concerning the start-up and shutdown of operations, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible readings and COM data. This rule will be effective on August 15, 2002.

VII. 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 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. section 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 September 16, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(146) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(146) On October 21, 1999, Indiana submitted revised state opacity regulations. The submittal amends 326 IAC 5–1–1, 5–1–2, 5–1–3, 5–1–4(b), and 5–1–5(b). The revisions address provisions concerning the startup and shutdown of operations, averaging period terminology, temporary exemptions, alternative opacity limits, and conflicts between continuous opacity monitor and visual readings.

(i) *Incorporation by reference.* Opacity limits for Indiana contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 *Indiana Register* 426 on November 1, 1998.

(ii) *Additional material.* Letter of October 10, 2001, from Janet McCabe, Indiana Department of Environmental Management, Assistant Commissioner of the Office of Air Quality, to Stephen Rothblatt, US EPA Region 5, Chief of Air Programs Branch. The letter adds the technical justification and air quality analysis required for alternate opacity limits.

[FR Doc. 02–17235 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–121; TN–205–200206a; FRL–7245–7]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on September 1, 1993, and April 9, 1998. The first revision adds definitions for particulate matter based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). The second revision combines the Soda Recovery Boilers rule with the Kraft Mill Recovery Furnaces rule in the Visible Emission regulations.

DATES: This direct final rule is effective September 16, 2002, without further notice, unless EPA receives adverse comment by August 15, 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 Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Scofield can also be reached by phone at (404) 562–9034 or by electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634), EPA revised the national ambient air quality standards (NAAQS) for particulate matter, pursuant to section 109 of the Clean Air Act (CAA). Total suspended particulate (TSP) was replaced as the indicator for the particulate matter ambient standard by a new indicator, particulate matter with a nominal aerodynamic diameter of 10 micrometers or less in size (PM_{10}). In response, Tennessee amended its rules and regulations which dealt with particulate matter to assure compliance with the particulate NAAQS throughout Tennessee.

II. Analysis of State's Submittals

On September 1, 1993, the State of Tennessee, through the TDEC, submitted a revision to rule 1200–3–2–.01 General Definitions, adding definitions for (hhh) ''PM_{10} emissions'' and (jjj) ''Particulate Matter Emissions.'' These definitions comply with EPA's regulations for control strategies to attain and maintain the NAAQS for particulate matter and for permits to construct pursuant to parts C and D of the CAA.

On April 9, 1998, the State of Tennessee, through the TDEC, submitted revisions to Chapter 1200–3–5 Visible Emission Regulations. Rules 1200–3–5–.09 Kraft Mill Recovery Furnaces and 1200–3–5–.11 Soda Recovery Boilers are being combined into 1200–3–5–.09, with 1200–3–5–.11 being repealed. A revision to paragraph (3) of rule 1200–3–5–.09, which changes

a reference to Chapter 1200–3–20 Limits On Emissions Due to Malfunctions, Start-Ups, And Shutdowns from rule .07 to .06, is not consistent with the federally approved SIP. The revision to the codification of Chapter 1200–3–20 has not been submitted by the State to EPA. Therefore, no action is being taken by EPA on the revision to paragraph (3) of rule 1200–3–5–.09.

III. Final Action

EPA is approving the aforementioned revisions to the Tennessee SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 16, 2002, without further notice unless the Agency receives adverse comments by August 15, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 16, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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 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 September 16, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Accordingly, part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

2. Section 52.2220 is amended in the table in paragraph (c):

a. Under Chapter 1200–3–2 by revising the entry for ''Section 1200–3–2–.01.''

b. Under Chapter 1200–3–5 by revising the entries for ''Section 1200–3–5–.09'' and ''Section 1200–3–5–.11.''

The revisions read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
*	* * *	*		*
Chapter 1200–3–2	DEFINITIONS			
Section 1200–3–2-	General Definitions	06/26/93	9/16/02	[Insert citation of publication]
*	* * *	*		*
Chapter 1200–3–5-	VISIBLE EMISSION REGULATIONS			
Section 1200–3–5–.09	Kraft Mill and Soda Mill Recovery	04/06/98	9/16/02	[Insert citation of publication]
*	* * *	*		*
Section 1200–3–5–.11	Repealed	04/06/98	9/16/02	[Insert citation of publication]
*	* * *	*		*

* * * * *

[FR Doc. 02–17701 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0350a; FRL–7231–8]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from soil decontamination operations. We are approving the local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 16, 2002, without further notice, unless EPA receives adverse comments by August 15, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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 document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd FL., Ventura CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

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

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
VCAPCD	74.29	Soil Decontamination Operations	01/08/02	03/15/02

On May 7, 2002, this rule submittal was 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 This Rule?

On May 22, 2001, EPA finalized limited approval and limited disapproval of a previous version of this rule which was adopted on October 10, 1995.

C. What is the purpose of the submitted rule?

Rule 74.29 controls the emissions of VOCs from the clean-up of soils contaminated with gasoline, jet fuel, or diesel fuel. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

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 sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 74.29 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following: Issue Relating to VOC Regulation, Cut Points, Deficiencies, and Deviations (the ''Blue Book''), U.S. EPA, May 25, 1988.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSD has more information on our evaluation. In particular, the revisions to this rule adequately address the deficiencies identified in our May 22, 2001 limited disapproval by removing director's discretion formally contained in section C.4 of this rule. The revisions also contain other minor rule improvements and clarifications.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval and we therefore are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by August 15, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect, and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 16, 2002. This action will incorporate this rule into the federally enforceable SIP and will terminate all sanctions and sanction clocks associated with our May 22, 2001 limited disapproval.

III. Background Information

Why Was This Rule Submitted?

NO_X and VOC help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

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

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 the state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Accordingly, 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)(297) (i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.29 adopted on October 10, 1995, and amended on January 8, 2002.

* * * * *

[FR Doc. 02–17696 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR10–244, FRL–7246–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico: Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) plan submitted by the Commonwealth of Puerto Rico, for the purpose of implementing and enforcing the emission guidelines for existing municipal solid waste landfills. The plan was submitted to fulfill the requirements of the Clean Air Act (the Act). The intended effect of this action is to approve a plan required by the Act which establishes emission limits for existing municipal solid waste landfills, and provides for the implementation and enforcement of those limits.

EFFECTIVE DATE: This rule will be effective August 15, 2002.

ADDRESSES: Copies of the Commonwealth submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Environmental Protection Agency, Caribbean Environmental Protection Division, 1492 Ponce De Leon Avenue, Centro Europa Building, Suite 417, Stop 22, Santurce, Puerto Rico 00907–4127

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket, 401 M Street, SW, Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3713.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the Puerto Rico plan, and the elements therein, as submitted on February 20, 2001, for the control of air emissions from Municipal Solid Waste (MSW) landfills. When EPA developed the New Source Performance Standards (NSPS) (subpart WWW) for MSW landfills on March 12, 1996, it concurrently promulgated Emission Guidelines (subpart Cc) to control air emissions from existing MSW landfills. The EPA amended these rules on June 16, 1998 and February 24, 1999.

The Puerto Rico Environmental Quality Board (EQB) developed a plan, as required by section 111(d) of the Clean Air Act, 42 U.S.C. 7411(d), to adopt the Emission Guidelines into its body of regulations, and EPA is acting today to approve that plan.

II. What Are the Details of EPA's Specific Action?

On February 20, 2001, Puerto Rico submitted a plan for implementing and enforcing EPA's emission guidelines for existing MSW landfills. The plan contained several elements including: (1) A demonstration of Puerto Rico's legal authority to implement the section 111(d) MSW landfill plan; (2) identification of a mechanism to enforce the emission guidelines; (3) a list of known MSW landfills including their nonmethane organic compound emissions rate estimates; (4) a regulation requiring the installation of emission collection and control equipment which is no less stringent than the requirements in subpart Cc; (5) a description of the process Puerto Rico will use to review and approve site-specific gas collection and control design plans; (6) compliance schedules for each source that require final compliance no later than the dates required in EPA's November 8, 1999 Federal 111(d) plan (64 FR 60703), to which Puerto Rico is currently subject; (7) requirements for sources to test, monitor, keep records, and report to Puerto Rico; (8) records of the public hearings on the Commonwealth's Plan; and (9) a provision for the Commonwealth's submittal to EPA of annual reports on Puerto Rico's progress in the enforcement of its plan.

III. What Comments Were Received on the Proposed Approval and How Has EPA Responded to Them?

There were no comments received on EPA's proposed rulemaking (67 FR

17321, April 10, 2002) regarding the Puerto Rico plan. The 30-day public comment period on EPA's proposed approval ended on May 10, 2002.

IV. Conclusion

For reasons described in this action and in EPA's proposal, EPA is approving Puerto Rico's section 111(d) MSW landfill plan. For further details, the reader is referred to the proposal and the Technical Support Document.

V. Administrative Requirements

Executive Order 12866

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

Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0220. For additional information concerning these requirements, *see* 40 CFR 60.35c. 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.

Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the 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 section 6(b) of 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. Under section 6(c) of Executive Order 13132, EPA 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.

EPA has concluded that this rule does not have federalism implications. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do no apply to this rule.

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 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.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal 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.

Unfunded Mandates

Under sections 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 the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

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.

The EPA believes that VCS are inapplicable to this action. Today's

action does not require the public to perform activities conducive to the use of VCS.

Submission to Congress and the Comptroller General

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 the 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).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: July 3, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Part 62 is amended by adding new § 62.13107 and an undesignated heading to subpart BBB to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills (section 111(d) Plan)

§ 62.13107 Identification of Plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency a ''State Plan for implementation and enforcement of 40 CFR part 60, subpart Cc, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills on February 20, 2001.''

(b) Identification of sources: The plan applies to all applicable existing municipal solid waste landfills for which construction, reconstruction, or modification commenced before May 30, 1991; and for which waste has been accepted at any time since November 8, 1987 or that have added capacity for future waste deposition.

[FR Doc. 02–17876 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7241–4]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 16, 2002 unless EPA receives adverse written comment by August 15, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at the following addresses: The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154 East, Atlanta, Georgia 30334–4910, and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its

hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), and November 28, 2000, effective March 30, 2001 (66 FR 8090).

G. What Changes Are We Authorizing With Today's Action?

On April 28, 2000, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 1998 through June 30, 1999, otherwise known as RCRA Cluster IX. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of federal requirement	FEDERAL REGISTER	Analogous State authority [1]
Checklist 169—Petroleum Refining Process Wastes	08/06/98 ..... 63 FR 42184	12–8–62(2),(9), (10), and (20), 12–8–64(1)(D), (I), and (M), 12–8–65(a)(16) and (21), Georgia Hazardous Waste Management Act (GHWMA), Official Code of Georgia (O.C.G.A.) Rule 391–3–11–.07(1) 12—8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(10) and (20), 12–8–64(1)(J) and (L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11.07(1) and 391–3–11–.10(3) 12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F) and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 170—Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment.	08/31/98 ..... 63 FR 46334	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.

Description of federal requirement	FEDERAL REGISTER	Analogous State authority [1]
Checklist 171—Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	09/04/98 ..... 63 FR 47415	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 172—Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags.	09/9/98 ..... 63 FR 48127	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 173—Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule.	09/24/98 ..... 63 FR 51264	12–8–62(14) and (23), 12–8–64(1) (A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21), GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(23). 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 174—Post-Closure Permit Requirements and Closure Process.	10/22/98 ..... 63 FR 5671	Rules [2] 391–3–11–.05(1), 391–3–11–.10(1), 391–3–11–.10(2), and 391–3–11–.11(1)(a).
Checklist 175—HWIR–Media	11/30/98 ..... 63 FR 65937	12–8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21), 12–8–66(e) GWHWM, O.C.G.A. Rules 391–3–11–.10(2), 391–3–11–.11(10) 12–8–64(1)(A),(B),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.02(1) and 391–3–11–.10(2) 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.02(1), 391–3–11–.10(1) and (2), 3391–3–11.16 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (31) GHWMA, O.C.G.A. Rules 391–3–11–.02 and 391–3–11–.10(2) 12–8–64(1)(A),(B),(C),(D),(E),(F), and (I), 12–8–65(a)(3),(16), and (21), 12–8–66 GHWMA, O.C.G.A. Rules 391–3–11–.11(3)(d) and (f), (7)(d), and (12), 391–3–11–.11(10).
Checklist 176—Universal Waste Rule—Technical Amendments.	12/24/98 ..... 63 FR 71229	12–8–62–(13), 12–8–64(1)(A), (B), (D),(E),(F),(I),(K),(L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.18 12–8–62–(13), 12–8–64(1)(A),(B),(D),(E),(F),(I),(K),(L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.10(3) and 391–3–11.18.
Checklist 177—Organic Air Emission Standards: Clarification and Technical Amendments.	01/21/99 ..... 64 FR 3388	12–8–64(1)(A),(B),(C),(D),(E), and (F), 12–8–65(a)(3),(16), and (21) GHWMA, O.C.G.A. Rules 391–1–11–.08(1) and 391–3–11–.10(1) and (2).
Checklist 178—Petroleum Refining Process Wastes—Leachate Exemption.	02/11/99 ..... 64 FR 6813	12–8–62(10), 12–8–64(1)(D), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1).
Checklist 179—Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards.	05/11/99 ..... 64 FR 25413	12–8–62(10) and (20), 12–8–64(1)(D), and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(20), 12–8–64(1)(D),(J), and (L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A), (B),(D),(E),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.08(1) and 391–3–11.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(E),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(23), 12–8–64(1)(A),(B)(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 180—Test Procedures for the Analysis of Oil and Grease and Non-Polar Material.	05/14/99 ..... 64 FR 26327	12–8–62(10), (13), and (20), 12–8–64(1)(A),(B),(D), and (F), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.02(1)

[1] The Georgia provisions are from the Georgia Hazardous Waste Management Regulations effective November 16, 2000.
[2] State does not seek authorization for enforceable documents in lieu of post-closure permits.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits

for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 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). This action will be effective September 16, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17695 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 99–81; CC Docket No. 92–166; DA 02–1582]

Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; Amendment of the Commission's Rules To Establish a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** of 59 FR 53294 and 65 FR 59140. These corrections revise the text and title of two rules in part 25 of the Commission's rules pertaining to the 1.6/2.4 GHz and 2 GHz mobile-satellite service (MSS). These revisions correct inadvertent omissions in those rules as currently published in the Code of Federal Regulations.

DATES: Effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen J. Duall, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1103.

SUPPLEMENTARY INFORMATION:

Summary of Order

This document corrects two inadvertent omissions relating to the rules governing the Mobile-Satellite Service (MSS) in the 1.6/2.4 GHz and 2 GHz bands. These corrections conform the Commission's published rules to the texts of the final rule documents in which the rules were adopted.

First, § 25.136(a) of the Commission's rules is corrected to include aircraft cockpit communications in addition to aircraft Cabin Communications. In the *Big LEO Order*, the Commission adopted several modifications of the Commission's rules, including clarifying that the provisions of § 25.136(a) include cockpit communications as well as aircraft Cabin Communications systems. *See* 59 FR 53294. This modification to § 25.136(a), although specifically ordered in the text of the *Big*

LEO Order, was inadvertently omitted in the amended rules published in the **Federal Register** and sent for inclusion in the Code of Federal Regulations. The Commission subsequently amended § 25.136(a) to govern also earth station networks in the 2 GHz MSS band. *See* 65 FR 59140. In doing so, the failure to modify § 25.136(a) as ordered in the *Big LEO Order* was inadvertently carried over to the *2 GHz MSS Order*. This error is now corrected by revising § 25.136(a) to include aircraft cockpit communications as well as aircraft Cabin Communications, as originally ordered in the text of the *Big LEO Order*.

Second, the title of § 25.143 of the Commission's rules is corrected to include 2 GHz MSS systems in addition to 1.6/2.4 GHz MSS systems. The Commission ordered 2 GHz MSS systems to comply with § 25.143 as part of the 2 GHz MSS Order and amended § 25.143 to reflect this fact. These amendments were included in the final rules that were adopted in the 2 GHz MSS Order and published in the **Federal Register**. *See* 65 FR 59143. Although § 25.143 included 2 GHz MSS systems in the title when published in the *2 GHz MSS Order* and the **Federal Register**, the ordering language in the **Federal Register** inadvertently failed to include the necessary instructions to amend the title of § 25.143 to include 2 GHz MSS systems. *See id*. This omission is corrected by revising the title of § 25.143 to include 2 GHz MSS systems in addition to 1.6/2.4 GHz MSS systems.

Ordering Clause

Pursuant to § 0.261 of the Commission's rules, 47 CFR 0.261, §§ 25.136(a) and 25.143 of the Commission's rules, 47 CFR 25.136(a) and 25.143, *are corrected* as set forth further.

List of Subjects in 47 CFR Part 25

Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 25 is corrected by making the following correcting amendments:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Revise paragraph (a) of § 25.136 to read as follows:

§ 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

(a) User transceiver units associated with the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service may not be operated on civil aircraft unless the earth station has a direct physical connection to the aircraft cabin or cockpit communication system.

* * * * *

3. Revise the heading of § 25.143 to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

[FR Doc. 02–17828 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1549; MM Docket No. 01–205; RM–10212]

Radio Broadcasting Services; Weinert, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C3 to Weinert, Texas, as that community's first local aural transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 46425, September 5, 2001. The allotment of Channel 266C3 at Weinert, Texas, requires a site restriction 13.8 kilometers (8.6 miles) south of the community, utilizing coordinates 33–12–15 NL and 98–37–35 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 266C3 at Weinert, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 266C3 at Weinert, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–205, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Weinert, Channel 266C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17833 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1548; MM Docket No. 01–260; RM–10270]

Radio Broadcasting Services; Pawhuska, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Pawhuska, Oklahoma, as that community's second local FM transmission service, in response to a petition for rule making filed by Maurice Salsa. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 233A at Pawhuska, Oklahoma, requires a site restriction 11.7 kilometers north of the community, utilizing in this instance, reference coordinates 36–46–16 NL and 96–21–39

WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 233A at Pawhuska, Oklahoma, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 233A at Pawhuska, Oklahoma, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–260, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 233A at Pawhuska.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17834 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1547; MM Docket No. 01–259; RM–10269]

Radio Broadcasting Services; Grandin, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Grandin, Missouri, as that community's first local aural transmission service, in response to a petition for rule making filed by Charles Crawford. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 283A at Grandin, Missouri, is made without a site restriction, utilizing city reference coordinates 36–49–45 NL and 90–49–22 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 283A at Grandin, Missouri, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 283A at Grandin, Missouri, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–259, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Grandin, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17835 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1546; MM Docket No. 01–147; RM–10162]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to George West, Texas, as that community's third local aural transmission service, in response to a petition for rule making filed by Katherine Pyeatt. *See* 66 FR 37633, July 19, 2001. The allotment of Channel 292A at George West, Texas, requires a site restriction 12.7 kilometers (7.9 miles) west of the community, utilizing coordinates 28–20–33 NL and 98–14–45 WL. As George West is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 292A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 292A at George West, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico.'' With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 292A at George West, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 292A at George West, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–147, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 292A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17836 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1545; MM Docket No. 01–294; RM–10304]

Radio Broadcasting Services; Eldorado, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Eldorado, Texas, as an additional local FM transmission service at that community, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 53755, October 24, 2001. The allotment of Channel 293A at Eldorado, Texas, requires a site restriction 1.3 kilometers (0.8 miles) southwest of the community, utilizing coordinates 30–51–14 NL and 100–36–43 WL. Additionally, as Eldorado is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 293A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 293A at Eldorado, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico.'' With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 293A at Eldorado, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 293A at Eldorado, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–294, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 293A at Eldorado.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17837 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1544; MM Docket No. 01–292; RM–10302]

Radio Broadcasting Services; Ballinger, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Ballinger, Texas, as that community's second local commercial FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 53755, October 24, 2001. The allotment of Channel 238A at Ballinger, Texas, requires a site restriction 12.8 kilometers (8.0 miles) southeast of the community, utilizing coordinates 31–38–03 NL and 99–53–13 WL. As Ballinger is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 238A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 238A at Ballinger, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico.'' With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 238A at Ballinger, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 238A at Ballinger, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–292, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 238A at Ballinger.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17838 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1543; MM Docket No. 01–243; RM–10263]

Radio Broadcasting Services; Freer, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288A to Freer, Texas, as that community's second local FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 49330, September 27, 2001. The allotment of Channel 288A at Freer, Texas, requires a site restriction 6.8 kilometers (4.2 miles) south of the community, utilizing coordinates 27–49–20 NL and 98–38–04 WL. As Freer is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 288A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 288A at Freer, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico.'' With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 288A at Freer, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 288A at Freer, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–243, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 288A at Freer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17839 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1542; MM Docket No. 01–256; RM–10266]

Radio Broadcasting Services; Benavides, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Benavides, Texas, as that community's second local FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 282A at Benavides, Texas, requires a site restriction 5.3 kilometers (3.3 miles) south of the community, utilizing coordinates 27–32–59 NL and 98–25–11 WL. As Benavides is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 282A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 282A at Benavides, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico.'' With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 282A at Benavides, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 282A at Benavides, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–256, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282A at Benavides.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17840 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1541; MM Docket No. 01–258; RM–10268]

Radio Broadcasting Services; Bearden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 224A to Bearden, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed by Charles Crawford. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 224A at Bearden, Arkansas, is made without a site restriction, utilizing city reference coordinates 33–43–24 NL and 92–36–54 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 224A at Bearden, Arkansas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 224A at Bearden, Arkansas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–258, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Bearden, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17841 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers; Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates regulations on insurer reporting requirements. The regulations list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these regulations must file three copies of its report for the 1999 calendar year before October 25, 2002.

DATES: The final rule on this subject is effective July 16, 2002. Insurers listed in the regulations are required to submit reports on or before October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by

insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On March 27, 2002, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (67 FR 14667). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market shares from A.M. Best, we proposed to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by Part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we proposed to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by Part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1999, NHTSA proposed to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by Part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received no comments. Accordingly,

this final rule adopts the proposed changes to Appendices A, B, and C.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard or Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, NPS–32, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov or dmazyck@nhtsa.dot.gov;*

c. *Fax:* (202) 493–2290; or Theft loss reports may also be submitted to the docket electronically by:

d. Logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''ES Submit'' or ''Help'' to obtain instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this proposed rule and has determined that the action is not Asignificant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $88,500 for any insurer added to Appendix A, $35,420 for any insurer added to Appendix B, and $10,219 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency removed one company and added two companies; for Appendix B, the agency removed one company and for Appendix C, the agency removed one company and added one company. The agency estimates that the net effect of this final rule would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Henrietta L. Spinner, Office of Planning and Consumer Programs, NPS–32, NHTSA, 400 Seventh Street, SW, Washington, DC 20590;

b. *E-mail: hspinner@nhtsa.dot.gov; or*

c. *Fax:* (202) 493–2290.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group[1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group[1]
Nationwide Group
Progressive Group
SAFECO Insurance Companies
St. Paul Companies
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car System [1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: July 11, 2002.

Noble N. Bowie,

Acting Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–17893 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 2002 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 2002, until 2400 hrs, A.l.t., December 31, 2002.

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of sablefish assigned to trawl gear for the Central Regulatory Area was established as 1,086 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17854 Filed 7–11–02; 3:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 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.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102740–02]

RIN 1545–BA52

Loss Limitation Rules; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations that relate to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group.

DATES: The public hearing originally scheduled for Friday, July 19, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, March 12, 2002 (67 FR 11070), announced that a public hearing would be held on July 17, 2002. The date of the hearing changed and notice of the change was later published in the **Federal Register** on Friday, June 28, 2002 (67 FR 43574) announcing that a public hearing was scheduled for Friday, July 19, 2002, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, June 26, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, July 11, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Friday, July 19, 2002, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–17864 Filed 7–11–02; 3:09 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN No. 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of intent to establish Negotiated Rulemaking Committee; request for nominees and comments.

SUMMARY: The Occupational Safety and Health Administration is announcing its intent to establish a Cranes and Derricks Negotiated Rulemaking Advisory Committee (C–DAC) under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA). The Committee will negotiate issues associated with the development of a proposed revision of the existing construction safety standards for the cranes and derricks portion (''1926.550) of 29 CFR part 1926 Subpart N-Cranes, Derricks, Hoists, Elevators, and Conveyors. The Committee will include representatives of parties who would be significantly affected by the final rule. OSHA solicits comments on the initiative and requests interested parties to nominate representatives for membership on C–DAC.

DATES: Written comments and requests for membership must be submitted by September 16, 2002. Comments and requests for membership submitted by mail must be postmarked not later than September 16, 2002. E-mailed or faxed comments or requests for nomination must be received by September 16, 2002.

ADDRESSES: Written comments, including nominations for membership, may be submitted in any of three ways: by mail, by fax, or by e-mail. Please include ''Docket No. S–030'' on all submissions.

By mail, the address is: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments and nominations for membership that are 10 pages or fewer, may be transmitted to the OSHA Docket Office at telephone number (202) 693–1648.

By email, comments and nominations may be submitted through OSHA's Homepage at *ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Nancy Ford, Office of Construction Standards and Compliance Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room NB3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule for cranes and derricks in construction, codified in volume 29 of the Code of Federal Regulations (CFR), § 1926.550, which dates back to 1971, is based in part on industry consensus standards from 1967 to 1969. Since 1971, that section of subpart N has undergone only two amendments:

(1) In 1988, § 1926.550 was amended by adding a new paragraph (g) to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes or

derricks (see volume 53 of the **Federal Register**, pages 29116 to 29141).

(2) In 1993, § 1926.550 was amended by adding a new (a)(19), which states that *all employees shall be kept clear of loads about to be lifted and of suspended loads* (58 FR 35183).

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. For example, hydraulic cranes were rare at that time but are now prevalent. The existing OSHA standard does not specifically address hydraulic cranes. In contrast, industry consensus standards for derricks were updated in 1995 and crawler, truck and locomotive cranes were updated as recently as 2000.

A cross-section of industry stakeholders has asked the Agency to update Subpart N's crane and derrick requirements. They have indicated that over the past 30 years, the considerable changes in both work processes and crane technology have made much of Subpart N obsolete.

For the past two years, a number of industry representatives have been working with a cranes workgroup of the Advisory Committee for Construction Safety and Health (ACCSH). That workgroup has been developing recommended changes to Subpart N with respect to the requirements for cranes.

Based on the Agency's review of the issues, the progress made by the ACCSH cranes workgroup, and the continued interest in using negotiated rulemaking for this standard, OSHA proposes to use the negotiated rulemaking process to develop a proposed revision of the requirements in Subpart N for cranes and derricks.

The negotiated rulemaking effort described in this notice will be conducted in accordance with the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.*, and the Department of Labor's policy on negotiated rulemaking. Further detail on the Department's negotiated rulemaking policy is in the ''Notice of Policy on Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor'' (57 FR 61860).

A. The Concept of Negotiated Rulemaking

Usually, OSHA develops a proposed rule using staff and consultant resources. The concerns of affected parties are often identified through stakeholder meetings and an advance notice of proposed rulemaking (ANPR) published in the **Federal Register**. This is followed by formal consultation with ACCSH (under the Construction Safety Act, OSHA is required to consult with ACCSH on all proposed construction standards). Affected parties do not generally have an opportunity to submit arguments and data supporting their positions until the proposed rule is published. In contrast, in a negotiated rulemaking, there is greater opportunity for face-to-face, back-and-forth communications during the process among parties representing different interests and with agency officials.

Many times, effective regulations have resulted from traditional rulemaking. However, as Congress noted in the Negotiated Rulemaking Act (5 U.S.C. 561), current rulemaking procedures Amay discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *'' (Sec. 2(2)). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3)).

In negotiated rulemaking, a proposed rule is developed by a committee composed of representatives of government and the interests that will be significantly affected by the rule. Decisions are made by consensus. As defined in 5 U.S.C. 562 (2)(a)(b),

> 'consensus' means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee agrees to define such term to mean a general but not unanimous concurrence or agrees upon another specified definition.

The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a document such as this one in the **Federal Register**, which identifies a preliminary list of interests and requests public comment on that list.

Following receipt of the comments, the Agency establishes an advisory committee representing these various interests to negotiate a consensus on the provisions of a proposed rule. Representation on the committee may be direct, that is each member represents a specific interest, or indirect, through coalitions of parties formed to represent a specific sphere of interest. The Agency is a member of the committee representing the Federal government's statutory mission.

The negotiated rulemaking advisory committee is chaired by a trained facilitator, who applies proven consensus building techniques to help the advisory committee work towards a consensus. The many functions that he or she will perform are discussed below.

Once the committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses that consensus as the basis for its proposed rule, to be published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Members, other participants and other interested parties retain their rights under section 6(b) of the OSH Act to submit written comments and participate in an informal hearing (if requested). OSHA will then publish a final rule based on the record as a whole—the information that was received in the course of developing the proposed rule, together with the comments and information submitted after the proposal is published. OSHA anticipates that the pre-proposal consensus agreed upon by this Committee will effectively narrow the issues in the subsequent rulemaking and reduce the likelihood of litigation.

B. Selecting Part of Subpart N as a Candidate for Negotiated Rulemaking

The Agency may establish a negotiated rulemaking committee if it has determined that the use of the negotiated rulemaking procedure is in the public interest. As discussed above, OSHA has made that determination in this case.

The Agency bases this determination on prior experience with the negotiated rulemaking process. Even before the NRA was enacted, OSHA conducted negotiated rulemaking for its complex health standards for Methylenedianiline (MDA). This committee met seven times over a 10-month period (24 meeting days) and successfully negotiated standards for both general industry and construction. The final standards were ultimately based on the recommended proposed standards, and no litigation followed the standards' promulgation.

Also, the new Steel Erection Standard (29 CFR part 1926 subpart R) was based on a proposal that was developed by the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). The new final rule was published on January 18, 2001, and became effective January 18, 2002. The standard addresses the hazards that have been identified as the major causes of injuries and fatalities in the steel erection industry.

OSHA believes that the cranes and derricks portion of subpart N is an appropriate subject for negotiated rulemaking. In 1998, the Advisory Committee on Construction Safety and Health (ACCSH) formed a workgroup to review subpart N. In December 1999, ACCSH passed a motion submitted by the workgroup, recommending that OSHA consider negotiated rulemaking as the mechanism to revise/update subpart N. The workgroup has made considerable progress in identifying and prioritizing areas in the current standard that should be updated to reflect modern safety procedures.

The Agency believes that the selection criteria listed in the NRA (5 U.S.C. 563(a)) have been met. Interests that will be affected by a revised subpart N are known, are limited in number, and to a significant degree are already organized in interest-based coalitions. There appears to be a good possibility of reaching consensus on a proposed rule. In addition, OSHA expects that persons likely to be significantly affected by such a rule will negotiate in good faith. The need for updating provisions is acknowledged by all known interests. As progress has already been made through the efforts of the ACCSH workgroup, OSHA believes that the negotiated rulemaking process will not unreasonably delay the proposal or issuance of a final rule.

C. Agency Commitment

In initiating this negotiated rulemaking process, OSHA is making a commitment on behalf of the Department of Labor that OSHA and all other participants within the Department will provide resources to ensure timely and successful completion of the process. This commitment includes making the negotiations a priority activity for all officials of the Department who need to be involved.

OSHA will take steps to ensure that the negotiated rulemaking committee has sufficient resources to complete its work in a timely fashion. These include the provision or procurement of such support services as: adequate and properly equipped space; logistical support and timely payment of participant travel and expenses where necessary as provided for under the NRA; word processing, communications and other information handling services required by the committee; the services of a facilitator; and such additional statistical, economic, safety, legal, or other technical assistance as may be necessary.

OSHA, to the maximum extent possible consistent with its statutory mission and the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency believes that by updating the existing standard, it can limit or reduce the number of deaths and injuries to employees associated with cranes and derricks used in construction. The Agency, therefore, is committed to publishing a consensus proposal that is consistent with OSHA's legal mandates.

D. Negotiating Consensus

An important benefit of negotiated rulemaking is that it necessarily involves a mutual education of the parties on the practical concerns about the effect of different approaches to various issues. This stems from the fact that in negotiated rulemaking, agreement is by consensus of the interests. As noted above, the NRA defines consensus as the ''unanimous concurrence among interests represented on a negotiated rulemaking committee * * * unless such committee agrees to (a different definition).'' In addition, experience has demonstrated that using a trained facilitator to work with the Committee will assist all parties, including OSHA, to identify their real interests in the rule, and will enable them to reevaluate previously stated positions on issues involved in this rulemaking effort.

E. Some Key Issues for Negotiation

OSHA expects that the key issues to be addressed as part of these negotiations will include:

1. The identification/description of what constitutes ''cranes and derricks'' for purposes of determining the equipment that will be covered by the proposed rule.
2. Qualifications of individuals who operate, maintain, repair, assemble, and disassemble cranes and derricks.
3. Work zone control.
4. Crane operations near electric power lines.
5. Qualifications of signal-persons and communication systems and requirements.
6. Load capacity and control procedures.
7. Wire rope criteria.
8. Crane inspection/certification records.
9. Rigging procedures.
10. Requirements for fail-safe, warning, and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.

II. Proposed Negotiation Procedures

OSHA is proposing to use the following procedures and guidelines for this negotiated rulemaking. The Agency may modify them in response to comments received on this document or during the negotiation process.

A. Committee Formation

This Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee Act (FACA) and the NRA, in a manner consistent with the standards-setting requirements of the OSH Act.

B. Interests Involved

The Agency intends to ensure full and adequate representation of those interests that are expected to be significantly affected by the proposed rule. Section 562 of the NRA defines the term ''interest'' as follows:

> (5) ''interest'' means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.

The following interests have been tentatively identified as ''significantly affected'' by this rulemaking:

— Crane and derrick manufacturers, suppliers, and distributors
— Companies that repair and maintain cranes and derricks
— Crane and derrick leasing companies
— Owners of cranes and derricks
— Construction companies that use leased cranes and derricks
— General contractors
— Labor organizations representing construction employees who operate cranes and derricks and who work in conjunction with cranes and derricks
— Owners of electric power distribution lines
— Civil, structural and architectural engineering firms and engineering consultants involved with the use of cranes and derricks in construction
— Training organizations
— Crane and derrick operator testing organizations
— Insurance and safety organizations, and public interest groups
— Trade associations
— Government entities involved with construction safety and with construction operations involving cranes and derricks.

This list of potential interests is not presented as a complete or exclusive list from which committee members will be selected. The list merely indicates interests that OSHA has tentatively identified as being significantly affected by the outcome of the Subpart N

negotiated rulemaking process. One purpose of this document is to obtain public comment about whether an updated crane standard would significantly affect interests that are not listed above. OSHA invites comment and suggestions on this list of ''significantly affected'' interests.

C. Members

The negotiating group should not exceed 25 members, and 15 would be preferable. The Agency believes that the more members there are over 15, the more difficult it is to conduct effective negotiations.

OSHA is aware that there may be more interests, whether they are listed here or not, than membership slots on the Committee. In order to have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, these coalitions must agree to support, both financially and technically, a member on the Committee whom they will choose to represent their interest.

It is important to recognize that interested parties who are not selected to membership on the Committee can make valuable contributions to a negotiated rulemaking in any of several ways:

- Asking to be placed on the Committee mailing list and making written comments;
- Attending the Committee meetings, which are open to the public, caucusing with his or her interest's member on the Committee, or even addressing the Committee (often allowed at the end of an issue's discussion or the end of the session, as time permits); and/or
- Assisting in the work of a Committee workgroup.

Informal workgroups are usually established by an advisory committee to help it address technical issues or other particular matters. They might also help analyze costs and compliance data, help draft regulatory text, or initially address novel issues that arise during negotiations. Workgroup members usually have expertise or a particular interest in the technical matter(s) being studied. Because of the importance of this work on technical details, OSHA will also provide appropriate technical expertise for such workgroups, as needed.

D. Request for Nominations

OSHA solicits requests for appointment to membership on the Committee. Members can be individuals or representatives of organizations. However, an organization that requests membership should identify the individual who will be its representative. If the negotiation is to be successful, members must be able to fully and adequately represent the viewpoints of their respective interests. Those individuals or representatives of organizations who wish to be appointed as members of the Committee should submit a request to OSHA, in accordance with the ''Public Participation'' part of this document.

This document gives notice of the selection process to all potential participants and affords them an opportunity to request representation in the negotiations. The procedure for requesting such representation is set out under the Public Participation part of this document, below.

E. Good Faith Negotiation

Committee members need to have authorization to negotiate on behalf of their interests and be willing to negotiate in good faith. First, each member needs to have good communications with his or her constituencies. An ''intra-interest'' network of communication should be established to channel information between the member and his/her organization and interest coalition. Second, in nominating a member to represent it, each organization or coalition should designate a person with credibility and authority to insure that information is shared and decisions are made in a timely manner. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members, which must be sustained for a year or more.

Certain considerations are central to negotiating in good faith. One is the willingness to bring all issues to the table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of adversarial positions often taken in rulemaking proceedings, and instead to explore openly with other parties all relevant and productive ideas that may emerge from the discussions of the committee.

F. Facilitator

The facilitator will not be a party to the substantive development of the standard. Rather, the facilitator's role will generally include:

(1) Chairing the meeting of the committee in an impartial manner;

(2) Impartially assisting the members of the committee in conducting discussions and negotiations, and

(3) Supervising the taking of minutes and keeping of records and other relevant responsibilities.

G. OSHA Representative

The OSHA representative, as a full member of the Committee, will participate fully with the other members in the negotiations. The OSHA representative will meet regularly with various senior OSHA officials, briefing them on the negotiations and receiving their suggestions and advice, in order to effectively represent the Agency's views regarding the issues before the Committee. OSHA's representative will also inform the Office of Management and Budget of the status of the negotiations. OSHA's representative will also communicate with ACCSH on a regular basis, informing it of the status and content of the negotiations.

In addition, the OSHA representative will present the negotiators with the available evidence that the Agency has gathered on an issue-by-issue basis for their consideration. The Committee may also consult OSHA's representative to obtain technical information, and to discuss issues associated with setting and administering standards (such as jurisdiction, scope, enforceability, costs and feasibility concerns, and paperwork burden issues). The OSHA representative, together with the Facilitator, will also be responsible for coordinating the administrative and committee support functions to be performed by OSHA's support team.

H. Plain Language

OSHA intends to write its standards in plain language. This means that the provisions must be clear, logically organized, and written with a minimum of industry jargon. It is important to avoid the use of ambiguous regulatory language. It often takes significant effort to express complex and technical concepts in language that can be understood by non-experts. Agency staff will assist the Committee in its drafting efforts.

I. Additional Members

During the course of the Committee's negotiations, an unanticipated issue significantly affecting one or more unanticipated, unrepresented interests may arise. The Committee may decide that it is necessary for that issue to be addressed in the proposed rule. If so, the Agency will publish in the **Federal Register** a request for additional nominations to represent such interests. The Secretary may then select one or

more additional representatives, who will be added as Committee members.

The additional members will not be entitled to revisit any issue that has already been negotiated, unless the Committee agrees by consensus to do so.

J. Replacement Members

In the event an appointed member becomes unavailable or otherwise unable to serve, the Secretary will select a replacement member to represent the interest the original member had represented.

K. Tentative Schedule

When OSHA publishes a notice establishing the Committee and appointing its members, the Agency will include a proposed schedule of committee meetings. The first meeting will focus largely on procedural matters, including the proposed ground rules. The Committee will agree on dates, times, and locations of future meetings, and will identify and determine how best to address principal issues for resolution.

To prevent delays that might postpone timely issuance of the proposal, OSHA intends to terminate the Committee's activities if it does not reach consensus on a proposed rule within 18 months of the first meeting. The process may end earlier if the Facilitator or the committee itself so recommends.

L. Record of Meetings

In accordance with FACA's requirements, the Facilitator will supervise the keeping of minutes and a record of all committee meetings. These materials will be placed in the public docket No. S–030. Committee meetings will be announced in the **Federal Register** and will be open to the public.

M. Agency Action

As set forth in the NRA, ''the Agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.''

N. Committee Procedures

Under the general guidance and direction of the Facilitator, and subject to any applicable legal requirements, appropriate detailed procedures for committee meetings will be established.

III. Public Participation

In a negotiated rulemaking, there are many opportunities for an individual who is interested in the outcome of the rule to participate. As a first step in response to this notice of intent to negotiate, OSHA recommends that potential participants take a close look at the list of significantly affected interests. They should analyze the list for completeness or over-or under-inclusiveness, and for the purpose of coalition-building. Parties should try to identify others who share a similar viewpoint and who would be affected in a similar way by the rule. They should then communicate with these parties of similar interest and begin organizing coalitions to support their shared interests. Once the coalitions are formed, the parties can discuss which individuals should represent their interests and in what capacities.

As indicated above, not every interested party will be able to serve as a member of the Committee. However, an interested party may participate in a variety of other ways. These include working within the interest coalitions (promoting communication, providing expert support in a workgroup or otherwise helping to develop internal ranges of acceptable alternatives, etc.), attending committee meetings in order to caucus with the interest's member, or submitting written comments or materials to the Committee or workgroups.

Persons who will be significantly affected by the revision in the crane and derricks portion of Subpart N, whether or not their interest is listed above in this document, may apply for or nominate another person for membership on the committee to represent such interests. Such requests must be received by the Docket Office (see instructions under **ADDRESSES** near the beginning of this Notice), no later than September 16, 2002. In general, under the NRA, members of the negotiated rulemaking committee shall be responsible for their own expenses, except in certain limited circumstances (see 5 U.S.C. section 588).

Each application or nomination must include:

(1) The name of the applicant or nominee and a description of the interest(s) such person will represent; (2) evidence that the applicant or nominee is authorized to represent those interests that the person proposes to represent, and (3) a description of the person's qualifications and expertise regarding those interests. Each applicant must submit a written commitment to actively participate in good faith in the development of the rule.

All written comments, including comments on the appropriateness of using negotiated rulemaking to develop a proposed cranes and derricks standard, and the topics to be covered regarding cranes and derricks, should be directed to Docket No. S–030, and sent to the OSHA Docket Office (see instructions under **ADDRESSES** near the beginning of this Notice).

IV. Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*), FACA (5 U.S.C. Appendix 2), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), and Secretary of Labor's Order No. 3–2000 (65 FR 50017, Aug. 16, 2000).

Signed at Washington, DC, this 10th day of July, 2002.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 02–17768 Filed 7–15–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC47

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Plans and Information

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to December 13, 2002, the previous deadline of August 15, 2002, for submitting comments on the proposed rule published May 17, 2002 (67 FR 35372), that describes plan submittals for oil and gas exploration, development and production on the Outer Continental Shelf (OCS).

DATES: We will consider all comments received by December 13, 2002, and we may not fully consider comments received after December 13, 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. If you wish to e-mail comments, the e-mail address is: *rules.comments@MMS.gov.* Reference

''AC47 Plans and Information Comments'' 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: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rulemaking on May 17, 2002 (67 FR 35372), to completely reorganize and update the 30 CFR 250, subpart B, regulations that describe plan submittals for oil and gas exploration and development and production on the OCS. In addition, MMS prepared a companion draft Notice to Lessees and Operators (NTL) for the Gulf of Mexico OCS Region (GOM OCS Region). The draft NTL further interprets the proposed rule regarding information required to be submitted for MMS determinations, analyses, and approvals of plans in the GOM OCS Region. The draft NTL is posted on our MMS web site with the proposed rule for comment. Both the proposed rule and the NTL are very extensive and detailed. Therefore, the Offshore Operators Committee (OOC) requested that we extend the comment period in a letter to MMS dated June 6, 2002. The OOC stated that the additional time was necessary to allow reviewers to prepare comprehensive written comments on the proposed rule and NTL. We have agreed to their request and this notice extends the comment period to December 13, 2002.

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: June 18, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–17881 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 780, 784 and 800

RIN 1029–AC05

Bonding and Other Financial Assurance Mechanisms for Treatment of Long-Term Pollutional Discharges and Acid/Toxic Mine Drainage (AMD) Related Issues

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

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We are extending the comment period for the advance notice of proposed rulemaking (ANPRM) published in the May 17, 2002, **Federal Register**. The comment period was originally scheduled to close on July 16, 2002, and is now being extended for 90 days. In the ANPRM, we are seeking comments on what types of financial guarantees will best ensure adequate funding for the treatment of unanticipated long-term pollutional discharges, including acid or toxic mine drainage (collectively referred to as AMD), that develop as a result of surface coal mining operations.

DATES: To ensure consideration, we must receive your comments on or before October 15, 2002.

ADDRESSES: You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ruth Stokes, Program Support Directorate, Office of Surface Mining Reclamation and Enforcement, on 202–208–2611.

SUPPLEMENTARY INFORMATION: In response to requests from three parties, we are extending the public comment period for the proposed rule published on May 17, 2002 (67 FR 35071). In the ANPRM, we are seeking comments on what types of financial guarantees will best ensure adequate funding for the treatment of unanticipated long-term pollutional discharges, including acid or toxic mine drainage (collectively referred to as AMD), that develop as a result of surface coal mining operations. Specifically, we are interested in views from all parties on how we can best address the proper level of treatment and number of years to use in calculating financial assurance amounts for AMD, appropriate financial mechanisms to cover treatment costs, and suggestions on appropriate enforcement in cases where financial assurance is not fully adequate for the long term, but AMD is still being treated. Also, we invite comment on whether codification of our AMD policy statement would be helpful. We are extending the comment period to allow additional time for all interested parties to participate in formulating ideas and approaches on ways to address this important issue.

Dated: July 3, 2002.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 02–17892 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–121; TN–205–200206b; FRL–7245–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Implementation Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Tennessee for the purpose of revising the regulations for definitions and visible emission in the Tennessee SIP. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The 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: Written comments must be received on or before August 15, 2002.

ADDRESSES: All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61

Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

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

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Scofield can also be reached by phone at (404) 562–9034 or by electronic mail at *scofield.steve@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: April 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17700 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0350b; FRL–7231–9]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from soil decontamination operations. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by August 15, 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 document (TSD) 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 95812.

Ventura County Air pollution Control District, 669 County Square Dr., 2nd FL., Ventura CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses local rule, VCAPCD 74.29. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Anyone interested in commenting should do so at this time, we do not plan to open a second comment period. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–17697 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–079–SIPS; FRL–7246–3]

Motor Vehicle Emissions Budgets in Progress, Attainment, and Maintenance State Implementation Plans for Ozone, Carbon Monoxide, and Nitrogen Dioxide; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: At the request of the State of California, EPA is proposing to limit the duration of our approvals of motor vehicle emissions budgets (''budgets'') in certain existing California state implementation plans (SIPs) that provide for progress, attainment, and maintenance of the 1-hour ozone, 8-hour carbon monoxide (CO), and annual nitrogen dioxide (NO2) national ambient air quality standards (NAAQS). Specifically, we propose to limit our approvals of the existing budgets to last only until the effective date of EPA's adequacy finding for new budgets that replace these existing approved budgets (*i.e.,* budgets for the same pollutant, Clean Air Act requirement and year). The State of California will submit new budgets as part of comprehensive revisions to certain approved progress, attainment, and maintenance plans that reflect updated information and a new version of California's motor vehicle emission factor model. On the effective date of EPA's adequacy finding for a new budget our approval of the existing budget would terminate and thus the new adequate budget would apply instead of the existing budget for transportation conformity purposes.

DATES: Written comments on this proposal must be received by August 15, 2002.

ADDRESSES: Please mail comments to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following location: California Air Resources Board, 1001 I Street, Sacramento, California, 95812.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

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

Table of Contents

I. Background

A. What Approved SIPs Are Affected by this Proposed Action?

In Table 1 below, labeled ''California SIPs Whose Budget Approvals Are Being Modified,'' we list those SIPs in California that would be affected by this proposed action.

TABLE 1.—CALIFORNIA SIPS WHOSE BUDGET APPROVALS ARE BEING MODIFIED

Area	Pollutant	Plan	Adoption	Submittal	FR Approval
Antelope Valley (SE Desert).	Ozone	Attainment Plan	9/9/94, 12/9/94, 4/12/96.	11/15/94, 12/29/94, 7/10/96.	1/8/97 62 FR 1150.
Bakersfield	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Chico	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Coachella (SE Desert)	Ozone	Attainment Plan	9/9/94, 12/9/94, 4/12/96.	11/15/94, 12/29/94, 7/10/96.	1/8/97 62 FR 1150.
Fresno	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Kern (SE Desert)	Ozone	Attainment Plan	12/1/94	1/28/94	1/8/97 62 FR 1150.
Lake Tahoe—North	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Lake Tahoe—South	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Modesto	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Mojave (SE Desert)	Ozone	Attainment Plan	10/26/94	11/15/94	1/8/97 62 FR 1150.
Monterey	Ozone	Maintenance Plan	5/25/94, 10/19/94	7/14/94, 11/14/94	1/17/97 62 FR 2597.
Sacramento	Ozone	Attainment Plan	12/1/94, 12/12/94, 12/13/94, 12/14/94, 12/20/94.	12/29/94	1/8/97 62 FR 1150.
Sacramento	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
San Diego	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
San Francisco Bay Area.	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
South Coast	Ozone	Attainment Plan	11/15/96, 12/10/99	2/5/97, 2/4/00	4/10/00 65 FR 18903.
South Coast	NO2	Maintenance Plan	11/15/96	2/5/97	7/24/98 63 FR 39747.
Stockton	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Ventura	Ozone	Attainment Plan	11/8/94, 12/19/95	11/15/94, 7/12/96	1/8/97 62 FR 1150.

Note: The attainment plans typically also address CAA provisions relating to progress.

B. What Is Transportation Conformity?

Transportation conformity is a Clean Air Act (CAA) requirement for metropolitan planning organizations (MPOs) and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations, worsen existing violations, or delay timely attainment.

The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

Under section 176(c), a determination of conformity must be based on the most recent estimates of emissions, and such emissions estimates must be determined from the most recent population, employment, travel and congestion estimates as determined by the MPO or other agency authorized to make such estimates. To comply with section 176(c), motor vehicle emissions estimates for conformity purposes must keep pace with the periodic updates of population, employment, travel and congestion estimates. Section 176(c)(4)(B)(ii) of the Clean Air Act requires MPOs and DOTs to determine the conformity of transportation plans and transportation improvement programs no less frequently than every three years even in the absence of any revision to the underlying progress, attainment, or maintenance SIP. *See* 40 CFR 93.104 for the frequency requirements in the conformity rule.

C. What Are Motor Vehicle Emissions Budgets?

Progress, attainment, or maintenance SIPs necessarily include estimates of motor vehicle emissions to help areas attain and maintain the NAAQS. These estimates act as a budget or ceiling for emissions from motor vehicles, and are used in transportation conformity to determine whether transportation plans, programs and, in some circumstances, individual transportation projects conform to the progress, attainment or maintenance SIPs. In order for transportation plans, programs and projects to conform, estimated emissions from transportation plans, programs and projects must not exceed the emission budgets contained in the applicable progress, attainment or maintenance SIPs.

In California, new planning data are becoming available that have not as yet been incorporated into the SIPs. However, the CAA requires that the latest planning assumptions be used to make conformity determinations. As a result it becomes difficult to determine conformity to SIPs that are based on older planning assumptions. Therefore, the State has requested that we limit our approval of SIP budgets so that budgets that incorporate new planning data will apply for conformity as soon as they are adequate rather than when they are approved. As explained below, today's proposal sets forth a means to provide for the earliest possible use of new emissions budgets in the transportation planning and conformity process consistent with the fundamental SIP goal of expeditious attainment and maintenance of the NAAQS.

D. Which Motor Vehicle Emissions Budgets Usually Apply?

According to 40 CFR 93.118(e) of the transportation conformity rule, budgets in a submitted SIP can apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other approved SIP budgets that have been established for the same time frame and with respect to the same CAA requirements. For example, if there is already an approved attainment

demonstration SIP that establishes budgets for the attainment date, and the State submits a revision to those budgets, the newly submitted budgets cannot apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP budgets cannot be used unless we have formally found that the submitted SIP budgets are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e)(4) and (5), and in a May 14, 1999 memo from Gay MacGregor, Director, Regional and State Programs Division, Office of Mobile Sources, entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.''

For more details about the applicability of submitted and approved budgets, see 61 FR 36117 (July 9, 1996) and 62 FR 43783 (August 15, 1997). As explained below, today's proposal is not intended to modify the generally applicable rules regarding when submitted budgets become effective for the purposes of transportation conformity. Rather, today's proposal sets forth a means to accommodate the State's request to allow for the prompt use of new budgets in California within the bounds of existing regulatory and statutory requirements.

II. What Are We Proposing Today?

Today, as authorized in CAA sections 110(k) and 301(a), we are proposing to limit the duration of our prior approvals of existing budgets associated with the SIPs for the areas listed above. Under this proposed modification, the existing budgets will continue to be approved but will apply for transportation conformity purposes only until new budgets have been submitted and we have found the new budgets to be adequate.

A. What Modification to Our Approvals of the Existing Budgets Has the State Requested?

The California SIPs identified in Table 1 were developed and adopted in the period 1994 through 1996. In the years since the development of these plans, the California Air Resources Board (CARB) has prepared draft revisions to the mobile source component of the emissions inventories, including a major draft revision to the model used to calculate exhaust and evaporative emissions from motor vehicles. This California-specific model is known as EMFAC. CARB is now making final refinements to this completely new version of EMFAC.

The version of the State's motor vehicle emissions model available for development of the Table 1 SIPs was EMFAC 7F for those SIPs adopted before 1996. The most recent version of EMFAC applicable to these areas is 7G, which was adopted by CARB in 1996 and which was used in California SIPs adopted after 1995.[1]

On June 14, 2002, CARB submitted a letter indicating the State's intention to submit comprehensive revisions to the progress, attainment,and maintenance SIPs and the budgets for the areas listed in Table 1 to reflect, among other new information, the State's revised motor vehicle emissions factors and the updated information on vehicle fleet, age distribution, and activity levels (letter from Michael P. Kenny, CARB, to Wayne Nastri, EPA). The State notes that these plan revisions will benefit air quality and strengthen the SIPs by incorporating: new federally enforceable commitments and control measures; new and updated data that reflect the various emission control rules adopted since the old SIPs were developed; recent vehicle test data for cars and trucks to better represent real-world emissions; and updated vehicle registration data and activity data.

CARB anticipates that by January 2003 the new version of EMFAC will be submitted to us for approval for use in SIPs and conformity analyses statewide. In an April 26, 2002, letter to EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA), CARB included a schedule according to which the State expects to submit revised plans and new budgets based on the new EMFAC model and updated information.[2] The schedule shows that the State expects to submit SIPs for almost all of the areas listed in Table 1 by April 2003.

In the June 14, 2002 letter, CARB discusses the benefits of promptly replacing the existing budgets with the new budgets, noting the advantages of basing transportation conformity determinations on updated and enhanced plans and budgets that use the most current and accurate motor vehicle emissions data. CARB expresses concern that these benefits will not be realized for well over a year after the new plans and budgets are submitted, if our prior SIP approvals are not modified to allow for the replacement of the existing budgets upon our adequacy determination with respect to the new budgets.

As described above in Section I.D., new budgets associated with progress, attainment, and maintenance plans generally may not replace existing budgets for conformity purposes until we have taken final action to approve the new budgets and the new plans to which they correspond.[3] This SIP approval process may take as much as 18 months from submittal of the plans.[4] During this period of time, the conformity of transportation plans, programs, and projects would have to continue to be determined based on the existing budgets, which will increasingly diverge from the progress, attainment, and maintenance needs of the areas.

The adequacy process may be completed in far less time than would be required for full SIP and budget approval. Indeed, under the May 14, 1999, conformity guidance, EPA has established an expedited adequacy process, designed to be completed no more than 90 days from budget submittal.

Because CARB knows that existing SIPs are based on older planning data and models, CARB asks EPA to modify the approval of the existing budgets in the SIPs listed in Table 1 so that the approval of these budgets lasts only until EPA finds adequate new budgets based on updated planning data and models.

B. How Are We Proposing to Modify Our Approval of the Budgets?

In today's notice, we are proposing to limit our approval of existing budgets such that the approved motor vehicle emissions budgets for the SIPs listed in Table 1 will continue to be approved but will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and we have found them to be adequate for conformity purposes.

In other words, when the State submits revised SIPs containing new

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[1] See CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles,* 1996. EPA approved EMFAC 7G for use in transportation plan and program conformity analyses in a letter from David Howekamp, EPA, to Michael P. Kenny, CARB, dated April 16, 1998. On January 11, 2002 (67 FR 1464), we approved SF Bay Area-EMFAC2000 for use only in the Bay Area ozone SIP, but we set certain conditions on the approval as explained in that notice due to significant technical limitations in the model.

[2] Letter from Michael P. Kenny (CARB) to Jack Broadbent (EPA), Michael G. Ritchie (FHWA), and Leslie T. Rogers (FTA). A copy of this letter is in the docket to this rulemaking.

[3] In cases where there are currently no approved budgets, the applicability of new budgets would occur when EPA found the budgets adequate under 40 CFR 93.118(e).

[4] CAA section 110(k) provides for a completeness determination 6 months after submittal of a SIP revision, unless we have before that date deemed the submittal complete or incomplete, and requires us to take final action on the submittal within 1 year of the date on which the submittal became complete.

budgets using the new version of EMFAC and the updated information, as they have indicated they intend to do, those new budgets will apply for conformity purposes if and when we find the budgets to be adequate for conformity purposes and our adequacy finding is effective. The new budgets would then replace the existing budgets in the approved SIPs, provided that (as we expect) the new budgets are submitted as a revision to the progress, attainment, or maintenance SIPs and are established for the same years as those in the approved SIPs.

We believe the new budgets should apply as soon as we find them adequate rather than delaying applicability of the new budgets until we have approved the revised SIPs. This is because we know now that once we have confirmed that the new budgets are adequate, they will be more appropriate than the existing budgets for conformity purposes because the new budgets will be based on updated information.

If we do not modify our approval of the existing budgets, California will revise their plans and budgets as they have committed, but they will not be able to start using them quickly for conformity purposes. In contrast, according to today's proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we have committed to complete within 90 days after revisions are submitted, provided they are adequate. If we do not find the new budgets adequate, the existing budgets would continue to apply. In the event that we disapprove the plans and the new budgets after finding the new budgets adequate, we would act to reapprove the original budgets so that they will again apply, unless we have issued a protective finding with respect to disapproval of the new budgets. Conformity determinations of a transportation plan or TIP made based on the adequate budget will remain valid.

This notice does not propose any change to the transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs.

We are proposing only one change to our prior approvals of the California SIPs listed in Table 1: we propose to limit our approval of the budgets in those plans so that they will no longer apply once we find adequate new budgets for the same Clean Air Act requirement and year. In all other respects, the Table 1 SIPs will remain federally approved and enforceable unless and until we finalize approval of revised plans, and our limitations apply only to the extent that any new plans explicitly supersede the approved SIPs. Lastly, we do not view California's request to limit the duration of the approval of the existing budgets and have the new budgets apply after they are found adequate to be a SIP revision itself but rather a request that we modify our approvals of previously submitted and approved budgets.

III. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail or in person to the **ADDRESSES** section listed in the front of this document. Your comments must be received by August 15, 2002, to be considered in the final action taken by EPA.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed action modifies certain previous SIP approval actions and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to modify certain previous SIP approval actions 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 proposes to modify certain previous SIP approval actions, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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.

Because 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 in the context of EPA's review of SIP submissions, the requirements also do not apply in the context of EPA's modification of its previous approvals of such SIP submissions. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–17875 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7241–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate

final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 15, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334–4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17694 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA–02–11650 (HM–232A)]

RIN 2137–AD70, 2126–AA71

Security Requirements for Motor Carriers Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for the motor carrier transportation of hazardous materials. The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures being considered include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to state and local authorities.

DATES: Submit comments by October 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number FMCSA–02–11650 (HM–232A). If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at *''http://dms.dot.gov/''* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *''http://dms.dot.gov/.''*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments—approximately 95 percent—are made by highway. Many of the hazardous materials transported by motor carriers potentially may be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, Federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to the Federal Motor Carrier Safety Administration (FMCSA). 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA gave the Secretary the authority to issue ''regulations for the safe transportation in commerce of hazardous materials'' applicable to ''any person who transports, or causes to be transported or shipped, a hazardous material. * * *'' Public Law 93–633; 88 Stat. 2156 (Jan. 3, 1975). The Secretary has delegated this rulemaking authority to the Research and Special Programs Administration (RSPA). 49 CFR 1.53(b).

Motor carriers that transport hazardous materials in commerce must comply with both the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), administered by RSPA, and the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397), administered by FMCSA. As a result of a1984 amendment to the MCSA and a 1990 amendment to the HMTA, RSPA is authorized to eliminate or amend regulations (other than highway routing regulations) that appear in Part 397 of the FMCSR and that apply solely to the maintenance, equipment, loading,

or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this ANPRM as a joint RSPA-FMCSA action.

The HMR focus on the safe transportation of hazardous materials by all modes. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation. Part 177 of the HMR specifies operational requirements for motor carriers that transport hazardous materials, such as driver training, loading and unloading requirements for specific hazardous materials, and segregation and separation requirements on loaded vehicles. The FMCSR address motor vehicle and driver safety, including: driver qualifications and licensing; hours of service; vehicle parts and accessories; and vehicle inspection, repair, and maintenance. Part 397 of the FMCSR prescribes certain additional requirements related to attendance and surveillance, parking, and routing of motor vehicles that transport placarded quantities of hazardous materials. Except for certain shipments of Class 7 (radioactive) materials, neither the HMR nor the FMCSR specifically address security threats to highway shipments of hazardous materials.

On May 2, 2002, RSPA proposed several new requirements to enhance the security of hazardous materials transported in commerce by all modes (67 FR 22028). The notice of proposed rulemaking (NPRM) included proposals to revise shipping documentation requirements to make it easier for law enforcement personnel to identify unusual or unauthorized activities involving transportation vehicles or operators. The NPRM also proposed to require hazardous materials shippers and carriers to assure that hazmat employee training includes a security component. In addition, RSPA proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans.

II. Purpose of this ANRPM

RSPA and FMCSA are seeking information on the feasibility of imposing specific security requirements, in addition to those proposed in the May 2 NPRM, on motor carriers that transport hazardous materials in commerce. Certain government agencies, including the Department of Defense (DoD), the Department of Energy (DOE), and the Nuclear Regulatory Commission, as well as some private companies, employ rigorous security measures to protect sensitive shipments. Some of these security measures may also be appropriate for broader application to commercial motor carrier shipments of hazardous materials. In addition, there are many technological solutions for tracking shipments, communicating with drivers, or securing shipments within trailers that can protect shipments from hijacking or provide an early indication of a potential security problem.

Pre-notification. Though not required by Federal regulations, DoD and DOE sometimes notify state and/or local authorities prior to the transportation of certain materials through their jurisdictions. Such pre-notification may include the route planned for the shipment and the time of day during which the shipment will occur. Pre-notification enables emergency responders in jurisdictions through which such shipments take place to prepare in advance for a potential emergency or accident. It also enables state or local authorities to restrict traffic or take other precautions along the affected route.

Escorts. Certain hazardous materials shipments may be accompanied by armed escorts, either on the vehicle or in an accompanying vehicle. The presence of armed escorts is one measure designed to prevent or defeat an attempted hijacking or attack against a shipment.

Vehicle tracking. Satellite tracking, direct short-range communications, and cell phone technologies enable motor carriers to monitor a shipment while en route to its destination and to identify and communicate deviations from prescribed routes or time frames. Relatively sophisticated systems are currently available and are already used by many motor carriers to deter theft. Increasing numbers of motor carriers utilize vehicle tracking systems to enhance shipment security.

Anti-theft devices. There are a number of anti-theft devices that can help to reduce the risk of vehicle hijacking or cargo theft. Devices such as remote vehicle shut-offs, electronic ignition locks, and driver verification systems utilizing security codes or fingerprints assure that unauthorized persons cannot operate a motor vehicle. Tamper-resistant or tamper-evident seals and locks on cargo compartment openings protect sensitive cargoes and limit access to authorized personnel.

Operational measures. To reduce or eliminate the necessity for lengthy en route stops, some motor carriers are employing two drivers or using driver relays to avoid en route stops on long trips. These and other adjustments to routine operating procedures are relatively simple and cost-effective ways to enhance hazardous materials transportation security.

Safe havens. Under § 397.5 of the FMCSR, a motor vehicle containing Division 1.1, 1.2, or 1.3 explosives must be attended by the driver, or qualified representative of the motor carrier, at all times. Division 1.1, 1.2, and 1.3 explosives are excepted from the ''attendance'' requirements if three conditions are met. One of these conditions occurs when the vehicle is parked in a ''safe haven.'' A ''safe haven'' is defined in the regulations as an area specifically approved in writing by Federal, State, or local government authorities for the parking of *unattended* vehicles containing Division 1.1, 1.2, and 1.3 explosive materials. The decision as to what constitutes a safe haven is generally made by the competent local authority having jurisdiction over the area.

There are no DOT regulations for construction and security of a safe haven other than the requirements contained in § 397.7 dealing with parking of vehicles containing Division 1.1, 1.2, and 1.3 explosives. The National Fire Protection Association (NFPA) has published standards for safe havens under NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives.* DoD has published standards for non-government safe havens used for the commercial shipments of DoD munitions under Military Traffic Management Command (MTMC) Freight Traffic Rules Publication No.1B.

The use of a safe haven may, in fact, increase the possibility of cargo theft or hijacking, because the driver, or qualified representative, is relieved from the attendance requirements of the regulations when using a safe haven. On the other hand, temporary storage of high risk cargoes in a safe haven that utilizes state-of-the-art measures to limit access and exercise 24-hour surveillance could increase the overall transportation security of certain high risk cargoes.

III. Comments

The measures discussed above have the potential to significantly enhance the security of hazardous materials shipments transported by motor vehicle. In addition, at least some of the security measures discussed in this ANPRM could also be applied more broadly to

hazardous materials shipments transported by air, rail, or vessel. Further, application of some or all of these security measures could have implications for the transportation choices made by hazardous materials shippers and for intermodal shipments of hazardous materials. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking that would apply more generally to shippers and carriers of certain high-risk hazardous materials, such as explosives, poison-by-inhalation (PIH) materials, and bulk shipments of flammable liquids and gases. The cost of requiring additional security measures may be significant. We urge commenters to consider these issues as they develop responses to this ANPRM.

We invite commenters to submit data and information on:

(1) The state of information and communications technology development and the current level of adoption of state-of-the-art systems by the transportation industry, including those described above and others that commenters believe may warrant consideration;

(2) The effectiveness of different types of physical security measures;

(3) The overall security of safe havens for temporary storage during transportation, including suggestions for improving security at safe havens or alternatives to the use of safe havens;

(4) The costs involved with implementing specific security measures;

(5) Related safety or productivity benefits that would help offset costs;

(6) Measures or incentives that may be appropriate to consider in promoting technology development and adoption in conjunction with or separate from general regulatory requirements; and

(7) Whether specific physical security measures should be limited to certain highly hazardous materials and, if so, which highly hazardous materials might warrant specific security measures.

We are particularly interested in hearing from shippers and carriers that are utilizing some of the technologies and procedures discussed above—information on the benefits realized, the costs incurred, any technical or practical difficulties encountered, and other real-world experience would be especially helpful.

Because this ANPRM addresses measures to enhance the security of hazardous materials in transportation, we urge commenters to carefully consider the information they submit in response to the questions listed above. As with any rulemaking proceeding, we reserve the right to reject comments that are beyond the scope of the issues discussed herein. For this ANPRM, comments that include information that may compromise transportation security will be disqualified as beyond the scope of this rulemaking.

There are a number of additional issues that we must address in assessing the feasibility and effectiveness of various measures to enhance hazardous materials transportation security. These include the analyses required under the following statutes and executive orders:

1. *Executive Order 12866: Regulatory Planning and Review.* E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with adoption of specific security requirements for motor carriers that transport hazardous materials in commerce.

2. *Executive Order 13132: Federalism.* E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. We invite state and local governments with an interest in this rulemaking to comment on the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on state or local safety or environmental protection programs.

3. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.* E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on Indian communities.

4. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific security requirements for motor carriers that transport hazardous materials in commerce could have a significant economic impact on your operations, please submit a comment to explain how and to what your business or organization could be affected.

IV. Regulatory Notices—Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Issued in Washington, DC, on July 10, 2002, under authority delegated in 49 CFR part 106.

Robert A McGuire,

Associate Administrator for HazardousMaterials Safety,Research and Special Programs Administration.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–17899 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–60–P; 4910–EY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. RSPA–02–12773 (HM–232B)]

RIN 2137–AD69

Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Motor Carrier Safety Administration is proposing to eliminate an outdated requirement for certain motor vehicle operators to stop periodically to check their tires.

Eliminating this requirement will enhance the security of hazardous materials shipments.

DATES: Submit comments by August 15, 2002, but, to the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number RSPA–02–12773 (HM–232B). If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at ''*http://dms.dot.gov/*'' and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at ''*http://dms.dot.gov/*.''

FOR FURTHER INFORMATION CONTACT: William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

After the terrorist attacks of September 11, 2001, the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Special Programs Administration (RSPA), reviewed government and industry hazardous materials transportation safety and security programs with a view towards identifying areas where security should be enhanced. Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments—approximately 95 percent—are made by highway. Many of the hazardous materials transported by motor carriers potentially may be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, Federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to FMCSA. 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA gave the Secretary the authority to issue ''regulations for the safe transportation in commerce of hazardous materials'' applicable to ''any person who transports, or causes to be transported or shipped, a hazardous material. . . .'' Public Law 93–633; 88 Stat. 2156 (Jan. 3, 1975). The Secretary delegated this rulemaking authority to RSPA. 49 CFR 1.53(b).

Motor carriers that transport hazardous materials in commerce must comply with both the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), administered by RSPA, and the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397), administered by FMCSA. As a result of a 1984 amendment to the MCSA and a 1990 amendment to the HMTA, RSPA is authorized to eliminate or amend regulations (other than highway routing regulations) that appear in Part 397 of the FMCSR and that apply solely to the maintenance, equipment, loading, or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this NPRM as a joint RSPA-FMCSA rulemaking.

Section 397.17 of the FMCSR requires periodic tire inspections for certain vehicles transporting hazardous materials. Drivers of vehicles with dual tires must stop every two hours or 100 miles to inspect the tires. When originally promulgated, this requirement was intended to prevent possible fires caused by overheated tube-type tires. With advancements in tire technology, fires caused by tire overheating occur much less frequently.

To require a vehicle transporting a hazardous material to stop at frequent regular intervals increases the security risk associated with such transportation. Any stop provides an opportunity for potential highjacking or theft of the vehicle and its cargo. Eliminating the tire check stop reduces this potential security risk. Therefore, in this NPRM, we are proposing to remove the requirement to periodically stop and check dual tires from § 397.17 of Part 397. Operators of motor vehicles transporting hazardous materials must still check each vehicle's tires at the beginning of each trip and each time the vehicle is parked.

II. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

The proposal to eliminate the periodic tire check requirement for motor vehicles transporting hazardous materials will not result in increased compliance costs on the industry. Indeed, eliminating periodic stops to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We determined that the requirements proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. Eliminating the current requirement for operators of motor vehicles transporting hazardous materials to stop periodically to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

C. Executive Order 13132

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order

13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

This NPRM does not impose new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier 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.

H. Environmental Assessment

There are no significant environmental impacts associated with this NPRM.

List of Subjects in 49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, we propose to amend Title 49, Chapter III, Subchapter B of the Code of Federal Regulations, as follows:

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

1. The authority citation for part 397 would be revised to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

2. In § 397.17, paragraph (a) would be revised to read as follows:

§ 397.17 Tires.

(a) A driver must examine a motor vehicle's tires at the beginning of each trip and each time the vehicle is parked.

* * * * *

Issued in Washington, DC on July 10, 2002, under authority delegated in 49 CFR part 106.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Robert A McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–17898 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Lanai, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudency and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until August 15, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A total of 37 plant species historically found on Lanai were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Seven of these species are endemic to the islands of Lanai, while 30 species are reported from one or more other islands, as well as Lanai.

In other published proposals we proposed that critical habitat was prudent for 35 of the 37 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centarium sebaeoides, Clermontia oblongifolia ssp. mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus faurei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis, Zanthoxylum hawaiiense* from the island of Lanai (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, and 67 FR 3940). No change was made to these prudency determinations in the March 4, 2002 (67 FR 9805) revised proposal. In addition, on December 27, 2000, we proposed that critical habitat for *Phyllostegia glabra* var. *lanaiensis,* was not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known (65 FR 82086). No change was made in the March 4, 2002, revised proposal to the not prudent determination for *Phyllostegia glabra* var. *lanaiensis.* In the March 4, 2002, revised proposal, we proposed that critical habitat is prudent for one other species, *Tetramolopium lepidotum* ssp. *lepidotum,* for which a prudency determination had not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu) (67 FR 9805).

In the March 4, 2002, revised prudency and critical habitat proposal,

we proposed critical habitat for 32 of the 37 species from the island of Lanai (67 FR 9805). Critical habitat was not proposed for 5 of the 37 species. The five species are *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense* which no longer occur on the island of Lanai and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai (67 FR 9805), and *Phyllostegia glabra* var. *lanaiensis* for which we determined that critical habitat designation was not prudent because it has not been seen recently in the wild and no viable genetic material of this species is known (65 FR 82086).

We have proposed to designate a total of 8 critical habitat units covering approximately 7,853 hectares (ha) (19,405 acres (ac)) on the island of Lanai.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Lanai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Lanai_Crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH10'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th floor, Portland, OR 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–18016 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 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. 01–018–2]

Availability of Evaluation Related to FMD Status of Great Britain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an evaluation has been prepared by the Animal and Plant Health Inspection Service concerning the foot-and-mouth disease status of Great Britain (England, Scotland, Wales, and the Isle of Man) and the related disease risks associated with importing animals and animal products into the United States from Great Britain. This evaluation will be used as a basis for determining whether to relieve certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain. We are making this evaluation available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 16, 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. 01–018–2, 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. 01–018–2. 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. 01–018–2'' on the subject line.

You may read any comments that we receive on the evaluation 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. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain (England, Scotland, Wales, and the Isle of Man) and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. This action was necessary because FMD had been confirmed in both of those regions. The effect of the interim rule was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain and Northern Ireland.

Although we removed Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD, we recognized that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situations in both regions at a future date in accordance with Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules.

Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain and Northern Ireland, or whether we can restore Great Britain and Northern Ireland to the list of regions in which FMD is not known to exist, or regionalize portions of Great Britain or Northern Ireland as FMD-free.

On January 9, 2002, we published a final rule in the **Federal Register** (67 FR 1072–1074, Docket No. 01–031–3) in which we restored Northern Ireland (as well as the Netherlands) to the list of regions considered to be free of rinderpest and FMD and the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. The action with respect to Northern Ireland and the Netherlands was based on the results of an evaluation that found each region

met the standards of the OIE for being considered to be free of FMD.

In this notice, we are announcing the availability for review and comment of a document entitled ''APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)'' (May 2002). This evaluation assesses the FMD status of Great Britain and the related disease risks associated with importing animals and animal products into the United States from Great Britain. This evaluation will serve as a basis to determine whether to relieve certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain. We are making the evaluation available for public comment for 60 days.

You may view the evaluation in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

You may also request a copy by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

You may also view the evaluation on the Internet at *http://www.aphis.usda/gov/vs/reg-request.html.* At the bottom of that website page, click on ''Information previously submitted by Regions requesting export approval and their supporting documentation.'' At the next screen, click on the triangle beside ''European Union/Animals and Animal Products/Foot-and-Mouth Disease,'' then on the triangle beside ''Response by APHIS.'' A link will then appear for ''APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man), May 2002.'' Following that link will allow you to view the evaluation.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 10th day of July 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17795 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Research, Education, and Economics

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Solicitation for Membership to the Forestry Research Advisory Council.

SUMMARY: In accordance with the Federal Advisory Committee Act, the United States Department of Agriculture (USDA) announces solicitation for nominations to fill six vacancies on the Forestry Research Advisory Council. The initial Council membership was appointed with staggered terms of one, two, and three years. As a result of the staggered appointments, the terms of six members expired December 31, 2001. Nominations for a three-year appointment for all of the six vacant positions are sought.

DATES: Nominations must be received on or before August 16, 2002.

ADDRESSES: The address for hand-delivered nominations or nominations submitted using an express mail or overnight courier service is: Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3213, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024; fax: (202) 401–1706. Nominations sent via the U.S. Postal Service must be sent to the following address: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Office of the Forestry Research Advisory Council; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, Designated Federal Officer, Forestry Research Advisory Council; Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov,* or contact Dr. Hao Tran, Staff Assistant, Research and Development, Forest Service, U.S. Department of Agriculture; telephone: (202) 205–1293; fax: (202) 205–1530; e-mail: *htran@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Forestry Research Advisory Council was established to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the McIntire-Stennis Act of 1962 (16 U.S.C. 582a-4, *et seq.*). The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600). The Council is composed of 20 voting members from the following membership categories:

- Federal and State agencies concerned with developing and utilizing the Nation's forest resources, in particular committee membership, will include representation from the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;
- The forest industries;
- The forestry schools of the State certified eligible institutions, and State agricultural experiment stations; and
- Volunteer public groups concerned with forests and related natural resources.

Nomination of members representing the forestry schools will be sent to the Secretary by State-certified eligible forestry schools. This notice does not seek nominations representing those institutions.

Nominees will be carefully reviewed for their broad expertise, leadership and relevancy to a membership category. Nominations for one individual who fits several of the categories, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee.

To ensure that recommendations of the Council take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Each nominee must submit and complete Form AD–755, Advisory Committee Membership Background Information (which can be obtained from the contact persons above) and will be vetted before selection. Send or fax the nominee's name, resume and completed Form AD–755 as noted above. Applicants are strongly encouraged to submit nominations via overnight mail or delivery service to ensure timely receipt by the USDA.

Done at Washington, DC this 3rd day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–17797 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Draft Environmental Impact Statement for the Drew Creek, Diamond Rock and Divide Cattle Allotments, Tiller Ranger District, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA

ACTION: Notice of intent to supplement a draft environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a Supplement to the Draft Environmental Impact Statement (EIS) for the Drew Creek, Diamond Rock and Divide Cattle Allotments. The draft EIS for the Drew Creek, Diamond Rock and Divide Cattle Allotments was released by former Forest Supervisor Don Ostby in May 2001 (Notice of Availability, May 25, 2001). Based on comments received on the draft EIS, Forest Supervisor James H. Caplan decided to prepare a supplement pursuant to 40 CFR 1502.9(c)(1)(ii). This supplement will provide additional information, as well as another alternative, to the existing analysis.

ADDRESSES: Send written comments and suggestions concerning the scope of this supplement to Jill A. Dufour, District Range, Tiller Ranger District, 27812 Tiller-Trail Highway, Tiller, Oregon 97484.

FOR FURTHER INFORMATION CONTACT: Wes Yamamoto, Resource Assistant, Tiller Ranger District, 27812 Tiller-Trail Highway, Tiller, Oregon 97484, or (541) 825–3201.

RESPONSIBLE OFFICIAL: Forest Supervisor James A. Caplan is the responsible official for this EIS. Mr. Caplan may be contacted at Umpqua National Forest, P.O. Box 1008, Roseburg, OR 97470.

SUPPLEMENTARY INFORMATION: The purpose of the supplement is to provide an additional alternative, which was submitted by the South Umpqua Grazing Association. It also will provide additional information on the social and economic environments that would be affected by the proposal. The supplement will be prepared and circulated in the same manner as the draft EIS (40 CFR 1502.9). Comments received on the supplement will be considered in the preparation of the Final Environmental Impact Statement (FEIS). The supplement to the draft EIS is expected to be available for public review and comment in August 2002. The comment period on the supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objection that could be raised at the draft EIS stage, but are not raised until the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Sup. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the supplemental draft EIS. Comments may also address the adequacy of the supplemental draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the supplemental draft EIS, as well as applicable laws, regulations and policies considered, in making a decision regarding the proposal. The final EIS is scheduled to be completed in November 2002. The Responsible Official is James A. Caplan, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in the Record of Decision. That decision is subject to appeal under 36 CFR Part 215.

Dated: July 2, 2002.

James A. Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–17789 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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: U.S. Census Bureau.

Title: Business and Professional Classification Report.

Form Number(s): SQ–CLASS.

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,448.

Number of Respondents: 43,600.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Census Bureau sponsors the SQ–CLASS, ''Business and Professional Classification Report,'' to collect information needed to keep the retail, wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the death of others, and changes in company organization, the Census Bureau canvasses by mail a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each firm selected in this sample is canvassed once for data on the establishment(s) associated with the new EIN. From the perspective of the business firms, this is a one-time collection of data on newly assigned EINs. A different sample of EINs is canvassed four times a year.

We plan to revise the SQ–CLASS form to improve the assignment of kind-of-business codes based on the new North American Industry Classification System (NAICS). Questions have been rearranged on the form to improve the flow. One question has been removed and respondents are asked to provide two additional percentages. We do not expect these inquiries to increase burden.

The completed SQ–CLASS form provides sales, receipts or revenue, company organization, new or refined NAICS codes, and other key information needed for sampling to maintain proper coverage of the universe. Based on the

collected information, EINs meeting the criteria for inclusion in the Bureau's retail, wholesale, or service surveys are subjected to a second sampling. The retail and wholesale EINs selected in this second sampling are placed on a panel to report in our monthly surveys. An additional panel of selected units are included in the annual surveys. The selected service cases report on an annual basis.

Affected Public: Businesses or other for-profit, Not-for-profit institutions.

Frequency: One time only.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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 6608, 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17894 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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: U.S. Census Bureau.

Title: Current Population Survey, October 2002 School Enrollment Supplement.

Form Number(s): None.

Agency Approval Number: 0607–0464.

Type of Request: Revision of a currently approved collection.

Burden: 4,275 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 4 minutes and 30 seconds.

Needs and Uses: The Census Bureau requests OMB clearance for the supplemental inquiry concerning school enrollment to be conducted in conjunction with October 2002 Current Population Survey (CPS) interviewing. Selected items which monitored changes in the types of vocational education have been removed since the supplement was last conducted in 2001 and new items have been added to investigate the fields of study for post-secondary degrees and the use of public libraries.

This data series has existed for 40 years and provides basic information on enrollment status of various segments of the population necessary as background for policy formation and implementation. The CPS October supplement is the only annual source of data on public/private elementary and secondary school enrollment and characteristics of private school students and their families, which are used for tracking historical trends and for policy planning and support. It is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, this survey provides national trends in enrollment and progress in school.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182 and Title 29 U.S.C., sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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 6608, 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17895 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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: U.S. Census Bureau.

Title: Current Industrial Reports (Wave III Mandatory & Voluntary Surveys).

Form Number(s): M311H, M311L, M311M, M311N, M336G, MQ313D, MQ313T, MA311D, MA315D, MA327E, MA333D, MA333F, MA333N, MA334P, MA334R and MA335L.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a Currently approved collection.

Burden: 10,274 hours.

Number of Respondents: 5,995.

Avg Hours Per Response: 1.7 hours.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. Primary users of these data are Government agencies, business firms, trade associations, and private research and consulting organizations. The Federal Reserve Board uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many Government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration, use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.

Due to the large number of surveys in the CIR program, for clearance purposes,

the CIR surveys are divided into ''waves.'' There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys from each wave into one clearance request, reducing the total number of clearance requests from six to three. Therefore, we are incorporating the burden hours currently contained in 0607–0776 into this request and discontinuing that clearance.

Also in this request, we are changing the reporting status of the following voluntary annual surveys to mandatory since they provide detailed commodity data for the 2002 Economic Census. They are MA311D, ''Confectionery'', MA333N, ''Fluid Power Products'', and MA335L, ''Electric Lighting Fixtures''. We are moving the following surveys from another wave into this wave because of changes in survey content. They are M311H, ''Animal & Vegetable Fats and Oil (Warehouse Stocks)'', M311L, ''Fats and Oils (Rendered)'', M311M, ''Animal & Vegetable Fats and Oil (Consumption and Stocks)'', M311N, ''Animal & Vegetable Fats and Oil (Production, Consumption, and Stocks)'', and MA334R, ''Computers and Office and Accounting Machines''. Due to a lack of funding, we are discontinuing MA333J, ''Selected Pollution Control Equipment'' and MA333U, ''Coin-Operated Vending Machines.'' More details concerning these changes are included in Question 15.

Affected Public: Businesses or other for-profit.

Frequency: Monthly, quarterly, and annually.

Respondent's Obligation: Monthly and Quarterly collections are typically voluntary; Annual collections (including counterpart collections) are mandatory.

Legal Authority: Title 13 U.S.C., sections 61, 81, 131, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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 6608, 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2202.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17896 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2002]

Foreign-Trade Zone 20—Newport News, Application for Subzone, Canon Virginia, Inc. (Computer Printers and Related Products), Newport News, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Virginia Port Authority, grantee of FTZ 20, requesting special-purpose subzone status for the computer printer and related products manufacturing plant of Canon Virginia, Inc. (Canon) in Newport News, Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 2, 2002.

Canon's Newport News plant is comprised of two sites in Newport News, Virginia: *Site 1* (165.60 acres currently, with 782,793 square feet with a possible expansion of 800,000 square feet) is located at 12000 Canon Blvd., Newport News; and *Site 2* (21.07 acres with 125,000 square feet) located at 120 Enterprise Drive, Newport News, Virginia.

The facility (1,400 employees) produces computer printers (HTSUS 8471, duty-free), and related products such as toner cartridges (HTSUS 8473, duty-free), toner drums (HTSUS 9009, duty-free), and toner (HTSUS 9009, duty-free and 3707, 6.5%). The company also remanufactures and refurbishes photocopying machines (HTSUS 9009, duty-free-3.7%) and bubble jet printers (HTSUS 8471, duty-free) and may include other Canon products such as scanners, facsimile machines, calculators, medical equipment, regular and digital cameras, video camcorders and broadcasting equipment in the future.

Foreign-sourced materials will account for some 50–70 percent of finished product value, and include items from the following general categories: mineral oils, inorganic acids, iron oxides, titanium oxides, sulfates, salts of oxometallic acid, ethers, amine function compounds, diazo compounds, organic derivatives of hydrazine, other organic compounds, synthetic organic coloring matter, paints, artificial waxes, prepared glues and adhesives, toners, prepared rubber accelerators, organic composite solvents, prepared binders, polymers of propylene/styrene/vinyl chloride/vinyl acetate, acrylic polymers, polyacetals, polyamides, amino-resins, silicones, self-adhesive plates of plastics, plastic lids, other articles of plastics, articles of unvulcanized and vulcanized rubber, belts, packing cases, uncoated paper, cartons, paper, printed booklets and leaflets, synthetic monofilaments, cleaning seals, glass spheres, stainless steel wire, fasteners, copper springs, articles of copper, tungsten, base fittings, metal office fasteners, fans, filtering apparatus, automatic data processing machines, molding boxes, valves, ball or roller bearings, shafts, gears, pulleys, electric motors, electrical transformers, electromagnets, batteries, electrical resistors, electrical apparatus for switching, electrical lamps, diodes, transistors, electronic integrated circuits, insulated wire and cable, insulated fittings, lenses, photocopying apparatus, counters, typewriter ribbons, ink pads, and testing and controlling instruments.

Zone procedures would exempt Canon from Customs duty payments on foreign materials used in production for export. Some 15 percent of the plant's shipments are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free and some at 3.7%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9 percent, weighted average 5.6%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board,

U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 30, 2002.).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026.

Dated: July 9, 2002.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. 02–17853 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–13A12.''

Northwest Fruit Exporters' (''NFE'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); and October 5, 2001 (66 FR 52111, October 12, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, Washington 98901–2149.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–13A12.

Date Deemed Submitted: July 8, 2002.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): L & M Companies, Selah, Washington; Orondo Fruit Co., Inc., Orondo, Washington; and Rawland F. Taplett d/b/a R.F. Taplett Fruit & Cold Storage Co., Wenatchee, Washington;

2. Delete the following companies as ''Members'' of the Certificate: Chief Wenatchee Growers, Wenatchee, Washington; Dole Northwest, Wenatchee, Washington; Fossum Orchards, Inc., Yakima, Washington; Garrett Ranches Packing, Wilder, Idaho; R.E. Redman & Sons, Inc., Wapato, Washington; Regal Fruit Cooperative, Tonasket, Washington; Sun Fresh International, LLC, Wenatchee, Washington; Taplett Fruit Packing Inc., Wenatchee, Washington; Voelker Fruit & Cold Storage, Inc., Yakima, Washington; and Williamson Orchards, Caldwell, Idaho; and

3. Change the listing of the following Members: ''Allan Bros., Inc., Naches, Washington'' to the new listing ''Allan Bros., Naches, Washington''; ''Borton & Sons, Yakima, Washington'' to ''Borton & Sons, Inc., Yakima, Washington''; ''Carlson Orchards, Yakima, Washington'' to ''Carlson Orchards, Inc., Yakima, Washington''; ''CPC International Apple Co., Tieton, Washington'' to ''CPC International Apple Company, Tieton, Washington''; ''Domex Marketing Co., Yakima, Washington'' to ''Domex Marketing, Yakima, Washington''; ''Douglas Fruit Co., Pasco, Washington'' to ''Douglas Fruit Company, Inc., Pasco, Washington''; ''Dovex Fruit Company, Wenatchee, Washington'' to ''Dovex Fruit Co., Wenatchee, Washington''; ''Hansen Fruit & Cold Storage, Co., Yakima, Washington'' to ''Hansen Fruit & Cold Storage Co., Inc., Yakima, Washington''; ''Jenks Bro. Cold Storage, Inc., Royal City, Washington'' to ''Jenks Bros. Cold Storage & Packing, Royal City, Washington''; ''Kershaw Fruit & Cold Storage, Yakima, Washington'' to ''Kershaw Fruit & Cold Storage, Co., Yakima, Washington''; ''Keystone Ranch, Riverside, Washington'' to ''Keystone Fruit Co. L.L.C. dba Keystone Ranch, Riverside, Washington''; ''Lloyd Garretson, Co., Inc., Yakima, Washington'' to ''Lloyd Garretson Co. Yakima, Washington''; ''Northern Fruit Co., Wenatchee, Washington'' to ''Northern Fruit Company, Inc., Wenatchee, Washington''; ''Northwestern Fruit & Produce Co., Yakima, Washington'' to ''Apple King, LLC, Yakima, Washington''; ''Obert Cold Storage, Zillah, Washington'' to ''Obert Cold Storage, Inc., Zillah, Washington'';

''Poirier Packing & Warehouse, Pateros, Washington'' to ''Poirier Warehouse, Pateros, Washington''; ''Price Cold Storage, Yakima, Washington'' to ''Price Cold Storage & Packing Co., Inc., Yakima, Washington''; ''Rainier Fruit Sales, Selah, Washington'' to ''Rainier Fruit Company, Selah, Washington; ''Rowe Farms, Naches, Washington'' to ''Rowe Farms, Inc., Naches, Washington''; ''Sund-Roy, Inc., Yakima, Washington'' to ''Sund-Roy L.L.C., Yakima, Washington''; ''Valley Fruit, Wapato, Washington'' to ''Valley Fruit III LLC, Wapato, Washington''; ''Yakima Fruit & Cold Storage, Yakima, Washington'' to ''Yakima Fruit & Cold Storage Co., Yakima, Washington''; and ''Zirkle Fruit Co., Selah, Washington'' to ''Zirkle Fruit Company, Selah, Washington''.

Dated: July 10, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–17765 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[No. 99–00006]

Export Trade Certificate of Review

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review.

SUMMARY: On January 11, 2000, the Secretary of Commerce issued an Export Trade Certificate of Review to T.P. International Expo Services, Inc. Because this certificate holder has failed to file an annual report as required by law the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to T.P. International Expo Services, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a Certificate of Review was issued on January 11, 2000 to T.P. International Expo Services, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to T.P. International Expo Services, Inc., on January 07, 2002, a letter containing annual report questions with a reminder that its annual report was due on February 25, 2002. Additional reminders were sent on April 11, 2002 and on May 21, 2002. The Department has received no written response to any of these letters.

On July 10, 2002, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify T.P. International Expo Services, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: July 10, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–17766 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84–00027.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to N.B. Carson & Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to N.B. Carson & Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on October 9, 1984 to N.B. Carson & Company, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The

annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on November 23, 2001. Additional reminders were sent on March 25, 2002 and on April 11, 2002. The Department has received no written response from N.B. Carson & Company, Inc. to any of these letters.

On May 28, 2002, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify N.B. Carson & Company, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing N.B. Carson & Company, Inc. thirty days to respond was published in the **Federal Register** on June 3, 2002 at 67 FR 38260. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of N.B. Carson & Company, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to N.B. Carson & Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated July 10, 2002, to notify N.B. Carson & Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: July 10, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–17767 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102B]

Proposed Information Collection; Comment Request; Monitoring of Fish Trap Fishing in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons using fish traps to participate in the commercial reef fish fishery in the Gulf of Mexico must make an appointment with NMFS in order for the fish traps to be inspected. This is a one-time requirement. Fishermen will also be required to make telephone reports when initiating and terminating fishing trips. This information is needed to monitor fish trap fishing.

II. Method of Collection

The information is submitted via a toll-freetelephone call.

III. Data

OMB Number: 0648–0392.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 63.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 184.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17858 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102C]

Proposed Information Collection; Comment Request; Documentation of Fish Harvest

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

Seafood dealers who possess red porgy, gag, black grouper, or greater amberjack during seasonal fishery closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

II. Method of Collection

This is a recordkeeping requirements–no information is submitted to NOAA.

III. Data

OMB Number: 0648–0365.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 25.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17859 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102D]

Proposed Information Collection; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chris Yates, Office of Protected Resources, 301–713–2322, ext. 114.

SUPPLEMENTARY INFORMATION:

I. Abstract

Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information.

The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone or fax. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Number: 0648–0311.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; State, Local, or Tribal Government.
Estimated Number of Respondents: 52.
Estimated Time Per Response: 30 minutes for reports on whales struck or on recovery of dead whales; 5 minutes for providing the relevant Native American whaling organization with information on the mark and self-identification information; 5 minutes for marking gear; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.
Estimated Total Annual Burden Hours: 62.
Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17860 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102E]

Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scot Yamashita, 301–427–2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. Natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

OMB Number: 0648–0179.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 49.

Estimated Time Per Response: 2 hours for an application; and 2 hours for a report.

Estimated Total Annual Burden Hours: 98.

Estimated Total Annual Cost to Public: $350.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17861 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of the Final Environmental Impact Statement/Final Management Plan for the Proposed San Francisco Bay National Estuarine Research Reserve

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has published the Final Environmental Impact Statement/Management Plan (FEIS/FMP) for the proposed San Francisco Bay National Estuarine Research Reserve. The FEIS/FMP addresses research, monitoring, education, and resource protection needs for the proposed reserve.

If no substantive comments have been submitted to NOAA by August 19, 2002, a notice of availability of a Record of Decision will be published in the **Federal Register** and a Designation Document will be signed by the Under Secretary of NOAA and the Director of the Romberg Tiburon Center of the San Francisco State University.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray (301) 713–3155, Extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910. Copies of the FEIS/FMP are available upon request to the Estuarine Reserves Division.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Dated: June 28, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone, Management.

[FR Doc. 02–17850 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902B]

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 meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Standing and Special Mackerel Scientific and Statistical Committee (SSC) and the Standing and Special Shrimp SSC on Tuesday, July 30, 2002.

DATES: The mackerel SSC will meet beginning at 8:30 a.m. on July 30, 2002, and will conclude by 12 noon. The Shrimp SSC will be convened immediately following the Standing and Special Mackerel SSC meeting.

ADDRESSES: The meetings will be held at the New Orleans Airport Hilton, 901 Airline Highway, 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: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel SSC will be convened to review stock assessment information on mackerel stocks, particularly Gulf Group king mackerel, as well as the report of the Socioeconomic Panel (SEP) and provide recommendations to the Council on possible changes to Federal rules affecting mackerels. The Shrimp SSC will convene to review the Shrimp Stock Assessment Panel (SSAP) report that includes recommendations for definitions of maximum sustainable yields (MSY) optimum yield (OY) overfishing, and the overfished condition for the various shrimp stocks in the Gulf. The Shrimp SSC will also receive a presentation regarding assessment of direct measures of shrimp fishing effort to determine effort and bycatch in the shrimp fishery and may make recommendation regarding these reports and presentations to the Council.

Although other non-emergency issues not on the agendas may come before the SSCs 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 SSCs 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.

Special Accommodations

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 July 22, 2002.

Dated: July 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17856 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902C]

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 will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP is scheduled to begin at 8:30 a.m. on Wednesday, July 31, 2002.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, 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: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will convene to receive reports from NMFS on the status and health of shrimp stocks in the Gulf, a stock assessment report, and a report on the Tortugas pink shrimp fishery. The Shrimp AP will also receive presentations regarding direct measures to assess shrimp fishing effort that can be used to evaluate effort and bycatch and a summit for sustainability of the shrimp fishery in the Gulf of Mexico.

The Shrimp AP will also review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that includes alternatives to add rock shrimp to the Shrimp FMP and establishment of status criteria for shrimp stocks including maximum sustainable yields (MSY), optimum yields (OY), as well as criteria for determining if any of the shrimp stocks are undergoing overfishing or should be classified as overfished. The Options paper may also contain alternatives for requiring vessel monitoring systems and bycatch quotas. Finally, the Shrimp AP will also discuss a preliminary draft of an environmental impact statement (EIS) for essential fish habitat (EFH) in the Gulf.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agendas may come before the AP 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 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.

Special Accommodations

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 July 22, 2002.

Dated: July 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17857 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 11, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63034, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 18, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	2,191,276 dozen of which not more than 1,287,946 dozen shall be in Category 338 and not more than 1,371,355 dozen shall be in Category 339.
347/348	1,492,124 dozen of which not more than 932,575 dozen shall be in Category 347 and not more than 725,339 dozen shall be in Category 348.
639	4,394,111 dozen.
642	435,935 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17831 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITIES FUTURES TRADING COMMISSION

Notice of Reinstatement of the Global Markets Advisory Committee

AGENCY: Commodities Futures Trading Commission.

ACTION: Notice of reinstatement of the Global Markets Advisory Committee.

SUMMARY: The Commodities Futures Trading Commission has determined to reinstate the charter of its ''Global Markets Advisory Committee.'' As required by sections 9(a)(2) and 149(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § § 9(a)(2) and 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the reinstatement of this advisory committee is necessary and is in the public interest in connection with the performance of duties on the Commission by the Commodity Exchange Act, 7 U.S.C. 1. *et seq.* as amended. This notice is published pursuant to section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2), and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Clarence R. Sanders, Legal Counsel to Commissioner Barbara P. Holum, at 202–418–5068, or Martin B. White, Committee Management Officer, at 202–418–5129. Written comments should be submitted to Jean A. Webb, Secretary, Commodities Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The globalization of the futures and options markets has been a principal development of the past decade. Such global expansion is characterized by:

- An increasing number of futures markets being established internationally,
- The increasingly multinational nature of regulated U.S. firms,
- The increasing presence of foreign competitors in the United States ,
- The international linking of markets,
- Concerns about international market risk, and
- An increased demand by U.S. market users for global brokerage services.

Markets are inextricably linked through common products and related market participants. Events that occur in one market can and frequently do cause global regulatory and business concerns.

The Global Markets Advisory Committee's charter directs the committee to assist the Commission in gathering information concerning the regulatory challenges of a global marketplace, including: (1) Avoiding unnecessary regulatory or operational impediments faced by those doing global business, such as differing and/or duplicative regulatory frameworks, lack of transparency of rules and regulations and barriers to market access, while preserving core protection for markets and customers; (2) setting appropriate international standards for regulating futures and derivatives markets and intermediaries; (3) assessing the impact on U.S. markets and firms of the Commission's international efforts and the initiatives of foreign regulators and market authorities; (4) achieving continued global competitiveness of U.S. markets and firms; and (5) identifying methods to improve domestic and international regulatory structures.

The Commission has actively worked with foreign regulators to address global

market issues. Recent global initiatives have been designed to enhance international supervisory cooperation and emergency procedures, to establish concrete standards of best practices that set international benchmarks for regulating futures and derivatives markets, to encourage improved transparency in those markets, to improve the quality and timeliness of international information sharing and to encourage jurisdictions around the world to remove legal or practical obstacles to achieving these goals.

The Commission anticipates that the Global Markets Advisory Committee will provide a valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from the committee will enable the Commission to assess more effectively the need for possible statutory, regulatory, policy or programmatic initiatives to address the challenges posed by the globalization of the marketplace.

Commissioner Barbara P. Holum is the Chairman and Designated Federal Official of the advisory committee. The committee's membership will be composed of representatives of the markets, firms and market users most directly involved in and affected by the globalization of the industry, and will include, but not be limited to, representatives of U.S. and foreign exchanges, regulators and self-regulators, financial intermediaries, market users, traders and academics. The advisory committee's membership will be balanced in terms of points of view.

The Commission has found that advice on specialized matters of the sort described above is best obtained through the advisory committee framework rather than through other, more costly, less flexible and less efficient means of assembling persons from all sectors of the financial services industry. The Commission has also found that the Global Markets Advisory Committee will not duplicate the functions of the Commission, another existing advisory committee, or other means such as public hearings. The Commission has concluded, therefore, that the reinstatement of the Global Markets Advisory Committee is essential to the accomplishment of its mission and is in the public interest.

Upon publication of this notice in the **Federal Register**, a copy of the reinstated charter of the Global Markets Advisory Committee will be filed with the Chairman of the Commission, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture. A copy of the reinstated charter will be furnished to the Library of Congress and to the Committee Management Secretariat and will be posted on the Commission's Web site at *http://www.cftc.gov*.

Issued in Washington, DC, on July 10, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17847 Filed 7–15–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Public Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission (''Commission'') will hold a public roundtable meeting at which invited participants will discuss clearing issues. Participants will be announced at a later date.

DATES: Thursday, August 1, 2002, from 1 p.m. to 5 p.m.

ADDRESSES: 1155 21st Street, NW., Washington, DC, Lobby Level Hearing Room located at Room 1000. Status: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued in Washington, DC this 10th day of July, 2002.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17848 Filed 7–15–02; 8:45 am]

BILLING CODE 6351–01–M

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 August 15, 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, NW., Room 10235, 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: July 10, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: National Assessment for Educational Progress: 2003 (KA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 658800.

Burden Hours: 169084.

Abstract: The 2003 NAEP Assessment will encompass the two curricular areas of Reading and Mathematics. Since 1984, NAEP has obtained descriptive information from three different sets of respondents: students, teachers, and school administrators. Questionnaires are administered to students at grades 4, 8, and 12, to teachers at grades 4 and 8,

to school administrators at grades 4, 8, and 12. This process continues in 2003.

The student background questionnaires consist of two types of questions: (1) Core questions and (2) subject-specific background questions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2032. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information 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 *vivan.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 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. 02–17754 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, August 5, 2002; 9 a.m. to 6 p.m. and Tuesday, August 6, 2002; 8:30 a.m. to 4 p.m.

ADDRESSES: Cornell University, 109 Clark Hall, Room 700, Ithaca, New York 14853.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–9458.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following: Monday, August 5, 2002, and Tuesday, August 6, 2002.

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301–903–9458 or *Glen.Crawford@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, Room 1E–190; Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 10, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–17804 Filed 7–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CPO2–394–000 and CPO–395–000]

Colonial Gas Company and Energy North Natural Gas, Inc.; Notice of Application

July 10, 2002.

Take notice that on June 26, 2002, Colonial Gas Company (Colonial), One Beacon Street, Boston, Massachusetts 02108, and EnergyNorth Natural Gas, Inc. (EnergyNorth) (jointly referred to as Applicants), 1260 Elm Street, Manchester, New Hampshire 03105, subsidiaries of KeySpan Corporation, filed in Docket Nos. CP02–394–000 and CP02–395–000, an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for service area determinations, a declaration that Colonial and EnergyNorth qualify as local distribution companies (LDC) and a waiver of the regulatory requirements under the NGA and the Natural Gas Policy Act (NGPA), 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 be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Applicants request a service area determination for the areas they serve in Massachusetts and New Hampshire in order to be able to enlarge or extend their facilities for the purpose of supplying increased market demands without the need to apply to the Commission for further authorization. Specifically, Colonial requests a determination that its service area include its territory in Northeastern Massachusetts as well as EnergyNorth's territory in New Hampshire. EnergyNorth requests a determination that its service area include its territory in New Hampshire as well as Colonial's territory in Northeastern Massachusetts. It is explained that the proposal would allow both affiliated companies to connect their systems at the state border in order to improve distribution system pressures and to avoid the potential of customer outages due to emergency situations.

Applicants also request a declaration that they qualify as LDC's in the service area to be determined for the purposes of section 311 of the NGPA.. In addition, Applicants request a waiver of the

regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA. It is asserted that Applicants' operations are almost entirely in intrastate commerce with the exception of small portions where they cross the Massachusetts-New Hampshire border. It is stated that Colonial's services and rates are regulated by the Massachusetts Department of Telecommunications and Energy and that EnergyNorth's services and rates are regulated by the New Hampshire Public Utilities Commission.

Any questions regarding this amendment should be directed to Thomas O'Neill at (617) 723–5512, or Kenneth T. Maloney at (202) 223–8890.

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 July 31, 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.

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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17810 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–383–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of August 1, 2002:

Sixth Revised Sheet No. 283

Columbia is proposing a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Columbia, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17817 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–384–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of August 1, 2002:

Fourth Revised Sheet No. 147

Columbia Gulf is proposing a new Section 4.2 (i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Columbia Gulf, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17818 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–382–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2002:

First Revised Sheet No. 85
Original Sheet No. 86

Crossroads is proposing a new Section 4.2 (i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Crossroads, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17816 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–380–000]

MIGC, Inc.; Notice of Filing

July 10, 2002.

Take notice that on July 1, 2002 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 6 with a proposed effective date of August 1, 2002.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17814 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. [Docket No. CP02–383–000]

National Fuel Gas Supply Corporation; Notice of Time Extension for Comment Period

July 11, 2002.

On July 1, 2002, the Federal Energy Regulatory Commission issued a *Notice of Intent To Prepare An Environmental Assessment for the Proposed National Fuel Replacement /Abandonment Project and Request For Comment on Environmental Issues* (NOI). The NOI was sent to all landowners on the project that was supplied by National Fuel Gas Supply Corporation (National Fuel). The NOI requested comments by July 31, 2001. However, on July 10, 2002, National Fuel filed a revised list of 83 additional landowners that were not included in our original NOI mail list. Therefore, we are sending copies of the NOI to the additional 83 landowners and extending the comment period for the NOI to August 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17921 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–377–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on July 1, 2002:

Fourth Revised Sheet No. 219
Third Revised Sheet No. 222

Northern proposes to update its tariff to reflect the final transition in

Northern's ownership by Dynegy, Inc. and to remove from the tariff certain organizational information that is already included on Northern's website. In that regard, Northern is revising Sheet No. 222 which references Northern's URL website address. Effective July 1, 2002, this address shall be changed to *www.northernnaturalgas.com.* In addition, Northern is revising Sheet No. 219 to remove certain language regarding the reporting structure Northern's merchant function under its Pipeline Sales Division. Pursuant to Standard L of Section 161.3 of the Commission's Regulations, such information is posted on Northern's Web site. Therefore, Northern is deleting this language from its tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17812 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–361–000]

Northwest Pipeline Corporation; Notice of Site Visit

July 10, 2002.

On July 16 and 17, 2002, the Office of Energy Projects staff and representatives of Northwest Pipeline Corporation (Northwest) will conduct a site visit of the Grays Harbor Pipeline Project 2001 in Thurston and Grays Harbor Counties, Washington.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff on July 16 at about 2 p.m. in the parking lot at the Best Western Tumwater Inn, 5188 Capitol Boulevard, Tumwater, Washington. Staff will start on July 17 at 7:30 a.m. at the same location. Also, Mr. Bill Prehm of Northwest can be contacted at telephone No. (360) 507–2804.

For further information, please contact the Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17809 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–083]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rates

July 10, 2002.

Take notice that on July 1, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective July 1, 2002:

Third Revised Sheet No. 640
Second Revised Sheet No. 641
Original Sheet No. 642
Original Sheet No. 643
Original Sheet No. 644
Original Sheet No. 645
Original Sheet No. 646
Original Sheet No. 647
Original Sheet No. 648
Original Sheet No. 649
Original Sheet No. 650
Sheet Nos. 651–699

REGT states that the purpose of this filing is to reflect the implementation of new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17819 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–076]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Selkirk Cogen Partners, L. P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17820 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–078]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and USGen New England, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17821 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–079]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Orchard Gas Corporation. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17822 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–080]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and USGen New England, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17823 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–081]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company

(Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Pittsfield Generating Company L P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17824 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–378–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 146, Sheet No. 237, Original Sheet No. 239, Original Sheet No. 240, Original Sheet No. 241 and Sheet No. 242, to become effective August 1, 2002:

Texas Gas states that the purpose of this filing is to modify Texas Gas's tariff to allow it to establish a website for the purpose of conducting limited interactive web-based auctions on the internet (the ''Auction Website''). In Order No. 637, the Commission encouraged pipelines to voluntarily develop capacity auctions and to file proposals for implementing auctions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17813 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–049]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 10, 2002.

Take notice that on July 2, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Eighth Revised Sheet No. 21 and Twenty-First Revised Sheet No. 22A, to be effective July 2, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect one new negotiated-rate contract with Duke Energy Trading and Marketing, L.L.C.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17825 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–381–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, to become effective July 1, 2002.

Williston Basin states it is proposing to make certain tariff modifications which it believes are necessary to clarify its existing Tariff. Two types of changes are included in the filing. First, Williston Basin has included language in its Tariff to reflect the fact that forms are available on its Interactive Web site

(Web site) at ebb.wbip.com, to assist its shippers in conducting business on Williston Basin's system. Second, Williston Basin has proposed modifications to its Tariff to reflect other miscellaneous changes. These modifications clarify Williston Basin's existing Tariff and have no rate impact.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17815 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–89–000, et al.]

Frederickson Power L.P., et al.; Electric Rate and Corporate Regulation Filings

July 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Frederickson Power L.P., EPCOR Power Development, Inc., EPDC Inc.

[Docket No. EC02–89–000]

Take notice that on July 1, 2002, Frederickson Power L.P. (Frederickson), and EPCOR Power Development, Inc. and EPDC Inc. (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of the transfer of 60% of the partnership interests in Frederickson to EPCOR Power Development, Inc. and EPDC Inc. (the Acquirors) (the Transaction) so that the Acquirors will indirectly own 100% of Frederickson. Applicants request confidential treatment for the documents contained in Exhibit I.

Comment Date: July 22, 2002.

2. El Paso Merchant Energy, L.P.

[Docket No. ER95–428–024]

Take notice that on July 1, 2002, El Paso Merchant Energy, L.P., filed a triennial market analysis in support of its existing market-based rates authority.

Comment Date: July 22, 2002.

3. Phelps Dodge Energy Services, LLC

[Docket No. ER99–2923–001]

Take notice that on July 1, 2002, Phelps Dodge Energy Services, LLC tendered for filing an updated market analysis and report of changes in status in compliance with the Federal Energy Regulatory Commission's (Commission) Order, issued July 1, 2002, in Green Power Partners I, LLC.

Comment Date: July 22, 2002.

4. Midwest Independent Transmission System Operator Inc.

[Docket No. ER02–108–007]

Take notice that on July 1, 2002, the Midwest Independent Transmission System Operator, Inc. submitted its compliance filing pursuant to the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order On Compliance Filing, Midwest Independent Transmission System Operator, Inc., in which the Commission directed the Midwest ISO to renegotiate and file a revised Retention Agreement for Market Monitoring Services with Potomac Economics, Ltd.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: July 22, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–001]

Take notice that on July 1, 2002, PJM Interconnection, L.L.C. (PJM), in compliance with the Federal Energy Regulatory Commission's Commission's May 31, 2002 ''Order Accepting Tariff Sheets As Modified'', PJM Interconnection, L.L.C. (PJM) submitted a compliance filing in this docket revising the PJM Open Access Tariff and Amended And Restated Operating Agreement of PJM Interconnection, L.L.C. to incorporate certain changes to its Economic Load Response Program.

Consistent with the May 31 Order, PJM requests an effective date of June 1, 2002 for the revisions. Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: July 22, 2002.

6. Midwest Independent System Operator, Inc. Southwest Power Pool, Inc.

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, Southwestern Public Service Company (Southwestern) submitted a compliance filing to the Commission's ''Order Conditionally Accepting Proposed Tariff Revisions and Revised Agreement and Confirming Regional Transmission Organization Status'' (Order) dated May 31, 2002 in the above-captioned docket.

Southwestern indicates a copy of the filing has been served upon the State Commissions of Kansas, New Mexico, Oklahoma and Texas, and on the customers taking service under the Southwestern portion of the Xcel Energy Joint Open Access Transmission Tariff.

Comment Date: July 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.,

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, Oklahoma Gas and Electric Company filed to comply with the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order in the above-captioned proceedings.

The Company states that a copy of the filing has been served on all parties to this proceeding, and on the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: July 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, pursuant to the Federal Energy

Regulatory Commission's (Commission) May 31, 2002 Order Conditionally Accepting Proposed Tariff Revisions and Revised Agreement and Confirming Regional Transmission Organization Status, East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., submitted a compliance filing detailing their plans for RTO participation.

Comment Date: July 22, 2002.

9. Entergy Gulf States, Inc.

[Docket No. ER02–1472–002]

Take notice that on July 1, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance Amended and Restated Interconnection and Operating Agreement with Cottonwood Energy Company LP in response to the Commission's May 31, 2002, order in Entergy Gulf States, Inc.

Comment Date: July 22, 2002.

10. New England Power Company

[Docket No. ER02–1482–001]

Take notice that on July 1, 2002, New England Power Company (NEP) submitted for filing an amendment to its First Revised Service Agreement No. 178 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Middleborough Gas & Electric Department (Middleborough).

A copy of this filing has been served upon the appropriate state agencies, Middleborough and each person designated on the official service list for this proceeding.

Comment Date: July 22, 2002.

11. Southern Company Services, Inc.

[Docket No. ER02–2211–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Irwin Electric Membership Corporation (Irwin EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Irwin EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

12. Southern Company Services, Inc.

[Docket No. ER02–2212–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Middle Georgia Electric Membership Corporation (Middle Georgia EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Middle Georgia EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

13. Southern Company Services, Inc.

[Docket No. ER02–2213–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Lamar Electric Membership Corporation (Lamar EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Lamar EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

14. Southern Company Services, Inc.

[Docket No. ER02–2214–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Oconee Electric Membership Corporation (Oconee EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Oconee EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

15. Southern Company Services, Inc.

[Docket No. ER02–2215–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Tri-County Electric Membership Corporation (Tri-County EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Tri-County EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

16. Southern Company Services, Inc.

[Docket No. ER02–2216–000]

Take notice that on July 1, 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 Southern Companies), filed an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff).

Specifically, Southern Companies propose to amend their Tariff so that they may offer, on a first-come, first-served basis to all Transmission Customers, Recallable Long-Term Firm Point-To-Point Transmission Service under the Tariff. Southern Companies will negotiate and execute with Eligible Transmission Customers Recallable Long-Term Firm Point-To-Point Transmission Service Agreements, the terms of which will specify the reserved capacity subject to recall by Southern Companies, the point of delivery, the point of receipt, the price structure, the length of the recall notice period, and the length of time in which the customer will have to respond to the recall notice. Southern Companies will post offerings of Recallable Long-Term Firm Point-To-Point Transmission Service on their OASIS, will display the

confirmed reservations for such capacity, and will indicate the capacity that is subject to recall.

Comment Date: July 22, 2002.

17. Southern Company Services, Inc.

[Docket No. ER02–2217–000]

Take notice that on July 1, 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 Southern Companies), filed eight transmission service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, these agreements are as follows: (1) Firm point-to-point transmission service agreement with the City of Tallahassee, Florida (regarding OASIS Request No. 327402 (Service Agreement No. 453); (2) firm point-to-point transmission service agreement with Cargill-Alliant (regarding OASIS Request No. 334204) (Service Agreement No. 454); (3) firm point-to-point transmission service agreement with PSEG Energy Resources & Trade LLC (Service Agreement No. 455); (4) non-firm point-to-point transmission service agreement with PSEG Energy Resources & Trade LLC (Service Agreement No. 456); (5) firm point-to-point transmission service agreement with Northern States Power d.b.a. NSP Energy Marketing (First Revised Service Agreement No. 246); (6) non-firm point-to-point transmission service agreement with Northern States Power d.b.a. NSP Energy Marketing (First Revised Service Agreement No. 247); (7) firm point-to-point transmission service agreement with El Paso Merchant Energy, LP (First Revised Service Agreement No. 234); and (8) non-firm point-to-point transmission service agreement with El Paso Merchant Energy, LP (First Revised Service Agreement No. 58).

Comment Date: July 22, 2002.

18. Southern Company Services, Inc.

[Docket No. ER02–2219–000]

Take notice that on July 1, 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, Southern Companies), filed an unexecuted transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, Southern Companies filed an unexecuted rollover agreement for long-term firm point-to-point transmission service (First Revised Service Agreement No. 387 under the Tariff) with Dynegy Power Marketing, Inc.

Comment Date: July 22, 2002.

19. Southern Company Services, Inc.

[Docket No. ER02–2220–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC) and Savannah Electric and Power Company (Savannah), filed with the Federal Energy Regulatory Commission (Commission) a Letter Agreement between Southern Power Company, GPC and Savannah that authorizes Georgia Power and Savannah to commence, and Southern Power to pay for costs associated with activities to interconnect Southern Power's generating facility in Effingham County, Georgia.

Comment Date: July 22, 2002.

20. Central Maine Power Company

[Docket No. ER02–2221–000]

Take notice that on July 1, 2002, Central Maine Power Company (CMP) tendered for filing, in accordance with Section 1.18 of the Settlement Agreement approved in Docket Nos. ER00–26–000, *et al.*, an informational filing containing the data used to update the formula rates in CMP's Open Access Transmission Tariff. The charges associated with the updated data took effect June 1, 2002. Copies of this filing were served on Commission Staff and the Maine Public Utilities Commission.

Comment Date: July 22, 2002.

21. Southwest Power Pool, Inc.

[Docket No. ER02–2222–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing seven unexecuted service agreements for Firm Point-to-Point Transmission Service with Aquila Merchant Services, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for these service agreements. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

22. Southwest Power Pool, Inc.

[Docket No. ER02–2223–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Exelon Generation Company (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

23. Southwest Power Pool, Inc.

[Docket No. ER02–2224–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two unexecuted service agreements for Firm Point-to-Point Transmission Service with Tex-La Electric Cooperative of Texas, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

24. Southwest Power Pool, Inc.

[Docket No. ER02–2225–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two unexecuted service agreements for Firm Point-to-Point Transmission Service with Tenaska Power Services Co. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for these service agreements. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

25. Southwest Power Pool, Inc.

[Docket No. ER02–2226–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

26. Creed Energy Facility, LLC

[Docket No. ER02–2227–000]

Take notice that on July 1, 2002, Creed Energy Facility, LLC (Creed) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Creed proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

27. Feather River Energy Center, LLC

[Docket No. ER02–2228–000]

Take notice that on July 1, 2002, Feather River Energy Center, LLC (Feather River) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Feather River proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Sutter County, California.

Comment Date: July 22, 2002.

28. Goose Haven Energy Center, LLC

[Docket No. ER02–2229–000]

Take notice that on July 1, 2002, Goose Haven Energy Center, LLC (Goose Haven) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Goose Haven proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

29. Lambie Energy Center, LLC

[Docket No. ER02–2230–000]

Take notice that on July 1, 2002, Lambie Energy Center, LLC (Lambie) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Lambie proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

30. Pajaro Energy Center, LLC

[Docket No. ER02–2231–000]

Take notice that on July 1, 2002, Pajaro Energy Center, LLC (Pajaro) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Pajaro proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Monterey County, California.

Comment Date: July 22, 2002.

31. Wolfskill Energy Center, LLC

[Docket No. ER02–2232–000]

Take notice that on July 1, 2002, Wolfskill Energy Center, LLC (Wolfskill) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Wolfskill proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

32. California Power Exchange Corporation

[Docket No. ER02–2234–000]

Take notice that on July 3, 2002, the California Power Exchange Corporation (CalPX) tendered for filing a proposed Rate Schedule FERC No. 1. The purpose of the rate schedule is to enable CalPX to recover from its participants its costs and expenses for winding up its business from July 1, 2002 through December 31, 2004. CalPX proposes to assess charges to its participants semi-annually based on the amount an individual participant owes CalPX or is owed by CalPX. Any funds not used at the time CalPX terminates its operations would be flowed through to participants. CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission. CalPX proposes an effective date of September 1, 2002 for its rate schedule.

Comment Date: July 25, 2002.

33. DTE East China, LLC

[Docket No. ER02–2235–000]

Take notice that on July 1, 2002, DTE East China, LLC (DTE East China) tendered for filing a service agreement for certain ''tolling'' services by DTE East China to PSEG Energy Resources & Trade LLC (PSEG ERT) to be effective June 1, 2002 as Service Agreement No. 1 to DTE East China's FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served upon PSEG ERT.

Comment Date: July 22, 2002.

34. Ameren Services Company

[Docket No. ER02–2236–000]

Take notice that on July 1, 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 Southwestern Electric Cooperative, Inc. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Southwestern Electric Cooperative, Inc. pursuant to Ameren's Open Access Tariff.

Comment Date: July 22, 2002.

35. Ameren Services Company

[Docket No. ER02–2237–000]

Take notice that on July 1, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and American Electric Power Services Corp. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to American Electric Power Service Corp. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 22, 2002.

36. Minnesota Power

[Docket No. ER02–2238–000]

Take notice that on July 1, 2002, Minnesota Power tendered for filing a Schedule 4A—Generator Imbalance Service based upon Minnesota Power's Open Access Transmission Tariff Schedule 4—Energy Imbalance and the Midwest Independent System Operator's proposed but currently suspended Schedule 4—Energy Imbalance and Inadvertent Interchange Service. An effective date of August 1, 2002 was requested for Schedule 4A.

Comment Date: July 22, 2002.

37. Maine Electric Power Company

[Docket No. ER02–2239–000]

Take notice that on July 1, 2002 , Maine Electric Power Company (MEPCO) tendered for filing a service agreement for Partial Interim Firm Point-to-Point transmission service entered into with Emera Energy Services, Inc. (Emera). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented, Original Service Agreement No. 69. MEPCO requests that this agreement become effective as of June 1, 2002.

Comment Date: July 22, 2002.

38. Central Illinois Light Company

[Docket No. ER02–2240–000]

Take notice that on July 1, 2002, Central Illinois Light Company (CILCO),

tendered for filing with the Federal Energy Regulatory Commission (Commission) under its Market Rate Power Sales Tariff long-term service agreement for one new customer, Sempra Energy Trading Corporation.

CILCO requested an effective date of June 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: July 22, 2002.

39. Commonwealth Edison Company

[Docket No. ER02–2241–000]

Take notice that on July 1, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Agreement for Dynamic Scheduling of Transmission Service between ComEd and Wisconsin Electric Corporation (Wisconsin Electric) under ComEd's Open Access Transmission Tariff (OATT).

ComEd seeks an effective date of June 1, 2002 for the Agreement and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Wisconsin Electric and the Illinois Commerce Commission.

Comment Date: July 22, 2002.

40. Hardee Power Partners Limited

[Docket No. ER02–2242–000]

Take notice that on July 1, 2002, Hardee Power Partners Limited (HPP) submitted an abbreviated rate filing in connection with amendments (Sixth Amendments) to two power sales agreements providing for the sale of electric capacity and associated energy to Seminole Electric Cooperative, Inc. (Seminole) and Tampa Electric Company (Tampa Electric), the rates under which were previously accepted by the Commission.

HPP requests waiver of the Commission's sixty (60) day notice requirements and an effective date of January 1, 2002. HPP has served copies of the filing on Seminole, Tampa Electric and the Florida Public Service Commission.

Comment Date: July 22, 2002.

41. Southwest Transmission Cooperative, Inc.

[Docket No. NJ02–5–000]

Take notice that on July 1, 2002, Southwest Transmission Cooperative, Inc., (SWTCO) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed changes in its Open Access Transmission Tariff.

Comment Date: July 31, 2002.

Standard Paragraph

E. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17920 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12191–000.

c. *Date filed:* June 10, 2002.

d. *Applicant:* Prosser Creek Hydro, LLC.

e. *Name and Location of Project:* The Prosser Creek Dam Project would be located on an existing dam on Prosser Creek in Nevada County, California. The existing dam is owned by Continental Group and the project would be partially located on lands administered by Continental Group.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, Fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Motions to intervene, protests, and comments 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. Please include the project number (P–12191–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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 document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Prosser Creek Reservoir, impounded by an existing 1,880-foot-long, 135-foot-high earthfill dam, having a surface area of 37,000 acres and a storage capacity of 28,641 acre-feet at normal maximum water surface elevation 5,741 feet msl and include: (1) A proposed powerhouse with a total installed capacity of 1 megawatt, (2) a proposed 500-foot-long, 3.5-foot-diameter penstock, (3) a proposed 3-mile-long, 15 kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.5 GWh.

k. 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).

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified

comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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, 385.211, 385.214. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17922 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12220–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Cedar Creek Hydro, LLC.

e. *Name and Location of Project:* The Cedar Creek Dam Hydroelectric Project would be located on Cedar Creek in Franklin County, Alabama. The project would utilize the Tennessee Valley Authority's existing Cedar Creek Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12220–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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 document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Cedar Creek Dam and Reservoir, would consist of: (1) A proposed 200-foot-long, 96-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 4 megawatts, (3) a proposed two-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 11.8 gigawatthours.

k. 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 item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular

application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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, 385.211, 385.214. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17923 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12226–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Gillham Hydro, LLC.

e. *Name and Location of Project:* The Gillham Dam Hydroelectric Project would be located on the Cossatot River in Howard County, Arkansas. The project would utilize the U.S. Army Corps of Engineer's existing Gillham Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12226–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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 document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Gillham Dam and Reservoir, would consist of: (1) A proposed 200-foot-long, 10-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 8 megawatts, (3) a proposed five-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 15.5 gigawatthours.

k. 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 item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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, 385.211, 385.214. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17924 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.:* 12236–000

c. *Date filed*: June 17, 2002.

d. *Applicant:* Nevada Creek Hydro, LLC.

e. *Name and Location of Project:* The Nevada Creek Dam Hydroelectric Project would be located at an existing dam owned by the State of Montana on Nevada Creek in Powell County, Montana.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12236–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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 document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) the existing 105-foot-high, 1,083-foot-long concrete dam impounding Nevada Lake, which has a 368-acre surface area at normal maximum water surface elevation 6,415 feet, (2) a proposed 200-foot-long, 72-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 1.5 megawatts, (4) a proposed one-mile-long, 25-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 2.8 gigawatthours.

k. 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 item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular

application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17925 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Filing and Soliciting Comments, Motions To Intervene and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12247–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Conroe Hydro, LLC.

e. *Name and Location of Project:* The Conroe Dam Hydroelectric Project would be located at an existing dam owned by the San Jacinto River Authority on the West Fork San Jacinto River in Montgomery County, Texas.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12247–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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 document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 82-foot-high, 11,300-foot-long concrete dam impounding Lake Conroe, which has a 200,985-acre surface area at normal maximum water surface elevation 201 feet, (2) a proposed 500-foot-long, 66-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of one megawatt, (4) a proposed one-mile-long, 15-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 3.2 gigawatthours.

k. 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 item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the

Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17926 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

July 10, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 2002, (30 Minutes Following Regular, Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 208–0400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on July 17, 2002. Attached is the certification of the General Counsel explaining the action closing the meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17969 Filed 7–12–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

July 10, 2002.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items Listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; However, all public documents may be examined in the Reference and Information Center.

799th Meeting—July 17, 2002; Regular Meeting 10:00 a.m.

Administrative Agenda

A–1.

Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations
A–3.
Docket# AD02–20, 000, Western Market and Infrastructure Assessment
A–4.
Docket# RT01–88, 016, Alliance Companies
Other#s EL02–65, 000, Alliance Companies and National Grid USA
EL02–65, 002, Virginia Electric and Power Company
EL02–65, 003, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
EL02–65, 004, FirstEnergy Corporation
EL02–65, 005, American Electric Power Services Corporation
EL02–65, 006, Ameren Services Company
EL02–65, 007, Ameren Services Company, FirstEnergy Corporation, Northern Indiana Public Service Company, Midwest Independent System Operator, Inc.
EL02–65, 008, PJM Interconnection, L.L.C., National Grid USA, American Electric Power Services Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana Illinois Power Company
A–5.
Docket# RT01–99, 000, Regional Transmission Organizations
Other#s RT01–99, 001, Regional Transmission Organizations
RT01–99, 002, Regional Transmission Organizations
RT01–99, 003, Regional Transmission Organizations
RT01–86, 000. Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–86, 001, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–86, 002, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–95, 000, 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. and Rochester Gas and Electric Corporation
RT01–95, 001, 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. and Rochester Gas and Electric Corporation
RT01–95, 002, 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. and Rochester Gas and Electric Corporation
RTO1–2, 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 and UGI Utilities, Inc.
RTO1–2, 001 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 and UGI Utilities, Inc.
RTO1–2, 002 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 and UGI Utilities, Inc.
RTO1–2, 003 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 and UGI Utilities, Inc.
RTO1–98, 000 PJM Interconnection, L.L.C.
RM01–12, 000 Electricity Market Design and Structure

Markets, Tariffs and Rates—Electric

E–1.
Reserved
E–2.
Docket# ER02–1899, 000, New York Independent System Operator, Inc.
E–3.
Omitted
E–4.
Docket# ER02–1913, 000, Nevada Power Company
E–5.
Docket# ER02–1919, 000, Oklahoma Gas and Electric Company
E–6.
Docket# ER02–1974, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1975, 000, Midwest Independent Transmission System Operator, Inc.
E–7.
Omitted
E–8.
Docket# SC00–1, 003, NorthWestern Energy, LLC
E–9.
Docket# ER00–188, 000, PSI Energy, Inc.
Other#s ER00–188, 001, PSI Energy, Inc.
E–10.
Omitted
E–11.
Omitted
E–12.
Docket# ER02–711, 000, American Electric Power Service Corporation
Other#s ER02–711, 001, American Electric Power Service Corporation
E–13.
Docket# ER02–924, 000, Michigan Electric Transmission Company
E–14.
Docket# ER00–1969, 009, New York Independent System Operator, Inc.
Other#s ER00–1969, 012, New York Independent System Operator, Inc.
ER00–3591, 008, New York Independent System Operator, Inc.
ER00–3591, 010, New York Independent System Operator, Inc.
E–15.
Docket# ER02–11, 000, Pacific Gas and Electric Company
Other#s ER02–208, 000, Pacific Gas and Electric Company
E–16.
Docket# ER02–1963, 000, Midwest Independent Transmission System Operator, Inc.
E–17.
Docket# ER02–1656, 000, California Independent System Operator Corporation
Other#s EL01–68, 000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Electricity Coordinating Council
E–18.
Docket# RT01–98, 002, PJM Interconnection L.L.C.
E–19.
Docket# ER02–139 003 Florida Power & Light Company
E–20.
Docket# ER01–3001, 001, New York Independent System Operator, Inc.
Other#s ER01–3001, 002, New York Independent System Operator, Inc.
E–21.
Docket# ER98–1440, 000, Central Vermont Public Service Corporation
E–22.
Docket# EC02–72, 000, NEO California Power LLC
Other#s EL02–92, 000, NEO California Power LLC
E–23.

Docket# TX96–4, 000, Suffolk County Electrical Agency

E–24.

Docket# TX97–5, 000, Tennessee Power Company

E–25.

Omitted

E–26.

Docket# TX97–8, 000, PECO Energy Company

Other#s TX97–8, 001, PECO Energy Company

E–27.

Docket# ER02–1420, 001, Midwest Independent Transmission System Operator, Inc.

E–28.

Docket# EL02–44, 001, Indeck Maine Energy, LLC v. ISO New England, Inc.

E–29.

Docket# ER02–935, 001, Florida Power & Light Company

Other#s ER02–935, 002, Florida Power & Light Company

ER02–2041, 000, Florida Power & Light Company

E–30.

Docket# ER02–854, 001, Florida Power & Light Company

Other#s ER02–854, 002, Florida Power & Light Company

E–31.

Docket# EL02–51, 001, California Electricity Oversight Board v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing LP, Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynegy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use The Transmission Lines Operated by the California Independent System Operator Corporation and All Scheduling Coordinators Acting on Behalf of the Above Entitles

E–32.

Docket# EL02–54, 001, San Diego Gas and Electric Company

E–33.

Docket# EL02–46, 001, Generator Coalition v. Entergy Services, Inc.

Other#s ER01–2201, 002, Entergy Services,Inc.

E–34.

Docket# EL02–60, 001, Public Utilities Commission of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources

Other#s EL02–62, 001, California Electricity Oversight Board v. Sellers of Energy and Capacity Under Long-Term Contracts With the California Department of Water Resources

E–35.

Docket# EL02–26, 001, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, Inc., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation

Other#s EL02–28, 001, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, Inc., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation

EL02–29, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–30, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–31, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–32, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–33, 001, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, Inc., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation

EL02–34, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–38, 001, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, Inc., Enron Power Marketing, Inc., El Paso Merchant Energy and American

EL02–39, 001, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.

EL02–43, 001, Southern California Water Company v. Mirant Americas Energy Marketing, L.P.

EL02–56, 001, Public Utility District No. 1 of Snohomish County, Washington v. Morgan Stanley Capital Group, Inc.

E–36.

Docket# RM01–8, 001, Revised Public Utility Filing Requirements

E–37.

Docket# ER97–1523, 003, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

Other#s OA97–470, 004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

OA97–470, 005, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

OA97–470, 006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

ER97–1523, 004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

ER97–1523, 005, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

ER97–1523, 006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

ER97–1523, 052, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.

ER97–1523, 061, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long

Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–4234, 002, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–4234 003 Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–4234, 004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
EC99–31, 001, New York Power Pool

E–38.
Docket# EL00–46, 001, Entergy Power Marketing Corporation v. Southwest Power Pool, Inc.
Other#S EL00–53, 001, Texas-New Mexico Power Company v. Public Service Company of New Mexico
ER00–1711, 001, Public Service Company of New Mexico
ER00–1829, 001, Southwest Power Pool, Inc.

E–39.
Docket# EF00–2013, 001, United States Department of Energy—Bonneville Power Administration

E–40.
Omitted

E–41.
Docket# ER01–2967, 001, New York Independent System Operator, Inc.

E–42.
Docket# ER02–648, 001, Sithe New Boston, LLC

E–43.
Docket# ER02–561, 001, Pacific Gas & Electric Company

E–44.
Docket# ER02–709, 001, Southwest Power Pool, Inc.

E–45.
Docket# EL00–95, 062, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–95, 031, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 053, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 058, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–98, 009, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 033, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 038, Investigation of Practices of California Independent System Operator Corporation & the California Power Exchange
EL00–98, 042, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 047, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 051, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL01–68, 012, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
EL01–68, 013, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–46.
Docket# ER00–2413, 008, American Electric Power Service Corporation
Other#s ER00–3435, 004, Carolina Power & Light Company
ER01–247, 006, Virginia Electric & Power Company

E–47.
Docket# NJ02–4, 000, Kansas Electric Power Cooperative, Inc.

E–48.
Docket# EL01–35, 000, Mirant Delta, LLC and Mirant Poltrero,LLC v. California Independent System Operator Corporation
Other#s EL00–95, 005, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 012, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 030, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–98, 029, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
RT01–82, 000, San Diego Gas & Electric Company
RT01–83, 000, Pacific Gas and Electric Company
RT01–85, 000, California Independent System Operator Corporation
RT01–92, 000, Southern California Edison Company
ER01–1877, 000, California Independent System Operator Corporation
PA02–1, 000, Operational Audit of the California Independent System Operator Corporation

E–49.
Omitted

E–50.
Omitted

E–51.
Omitted

E–52.
Docket# EL02–1, 000, Golden Spread Electric Cooperative, Inc. V. Southwestern Public Service Company
Other#s EL02–21, 000, Southwestern Public Service Company v. Golden Spread Electric Cooperative, Inc.

E–53.
Docket# ER02–929, 000, Ameren Services Company
Other#s ER02–929, 001, Ameren Services Company

E–54.
Docket# EL00–62, 045, ISO New England Inc.
Other#s EL00–62, 041, ISO New England Inc.

Miscellaneous Agenda

M–1.
Docket# RM02–3, 000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

M-2.
Docket# RM02–10, 000, Electronic Registration

Markets, Tariffs and Rates—Gas

G–1.
Reserved

G–2.
Docket# PR02–11, 000, Jefferson Island Storage & Hub L.L.C.
Other#S PR02–11, 001, Jefferson Island Storage & Hub L.L.C.

G–3.
Docket# RP02–348, 000, Colorado Interstate Gas Company

G–4.
Docket# RP98–206, 008, Atlanta Gas Light Company

G–5.
Docket# RP00–327, 000, Columbia Gas Transmission Corporation
Other#S RP00–327, 002, Columbia Gas Transmission Corporation
RP00–604, 000, Columbia Gas Transmission Corporation

RP00–604, 001, Columbia Gas Transmission Corporation
RP00–604, 002, Columbia Gas Transmission Corporation
G–6.
Docket# RP00–393, 000, Eastern Shore Natural Gas Company
Other#S RP01–43, 000, Eastern Shore Natural Gas Company
RP01–43, 001, Eastern Shore Natural Gas Company
G–7.
Docket# RP00–329, 000, Great Lakes Gas Transmission L.P.
Other#S RP00–606, 000, Great Lakes Gas Transmission L.P.
RP00–606, 001, Great Lakes Gas Transmission L.P.
G–8.
Docket# RP00–488, 000, Portland Natural Gas Transmission System
Other#S RP01–50, 000, Portland Natural Gas Transmission System
RP01–50, 001, Portland Natural Gas Transmission System
G–9.
Docket# RP01–245, 007, Transcontinental Gas Pipe Line Corporation
Other#S CP01–34, 000, Transcontinental Gas Pipe Line Corporation
CP01–34, 003, Transcontinental Gas Pipe Line Corporation
CP01–103, 000, Transcontinental Gas Pipe Line Corporation
CP01–103, 002, Transcontinental Gas Pipe Line Corporation
RP01–245, 000, Transcontinental Gas Pipe Line Corporation
RP01–245, 005, Transcontinental Gas Pipe Line Corporation
RP01–245, 008, Transcontinental Gas Pipe Line Corporation
RP01–253, 000, Transcontinental Gas Pipe Line Corporation
RP01–253, 002, Transcontinental Gas Pipe Line Corporation
CP01–368, 000, Transcontinental Gas Pipe Line Corporation
CP01–368, 002, Transcontinental Gas Pipe Line Corporation
RP02–171, 000, Transcontinental Gas Pipe Line Corporation
RP02–171, 002, Transcontinental Gas Pipe Line Corporation
G–10.
Docket# RP00–632, 007, Dominion Transmission, Inc.
Other#S RP00–632, 009, Dominion Transmission, Inc.
G–11.
Docket# RP02–176, 001, Panhandle Eastern Pipe Line Company
G–12.
Docket# RP02–209, 001, Southern Natural Gas Company
G–13.
Docket# RP02–143, 001, Kansas Gas Service, a Division of ONEOK, Inc. v. Enbridge Pipelines KPC
G–14.
Docket# RP02–134, 002, Maritimes & Northeast Pipeline, L.L.C.
Other#S RP02–134, 001, Maritimes & Northeast Pipeline, L.L.C.
G–15.
Docket# RP97–287, 058, El Paso Natural Gas Company
G–16.
Docket# RM96–1, 022, Standards for Business Practices of Interstate Natural Gas Pipelines
G–17.
Docket# RP00–336, 005, El Paso Natural Gas Company
Other#S RP00–139, 003, KN Marketing, L.P. v. El Paso Natural Gas Company
RP01–484, 001, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company, California Public Utilities Commission, Conoco Inc., Coral Energy Resources, L.P., El Paso Natural Gas Company, ONEOK Energy Marketing & Trading Co., L.P., Pacific Gas and Electric Company, Panda Gila River, L.P., Pacific Gas and Electric Company, Panda Gila River, L.P., Southern California Edison Company and Southern California Gas Company v. El Paso Natural Gas Company
RP01–486, 001, Apache Nitrogen Products, Inc., Arizona Electric Power Cooperative, Inc., Arizona Gas Division of Citizens Communications Company, BHP Copper Inc., El Paso Electric Company, El Paso Municipal Customer Group, Phelps Dodge Corporation, Public Service Company of New Mexico, Salt River Project and Southern Union Gas Company v. El Paso Natural Gas Company
G–18.
Docket# RP02–309, 000, Sunoco, Inc.(R&M) v. Transcontinental Gas Pipe Line Corporation
G–19.
Docket# PR02–12, 000, Dow Pipeline Company
G–20.
Docket# RP00–482, 002, Reliant Energy Gas Transmission Company
Other#S RP01–12, 002, Reliant Energy Gas Transmission Company
RP01–317, 003, Reliant Energy Gas Transmission Company
G–21.
Docket# RP97–288 009 Transwestern Pipeline Company
Other#s RP97–288, 010, Transwestern Pipeline Company
RP98–288, 011, Transwestern Pipeline Company
RP97–288, 012, Transwestern Pipeline Company
RP97–288, 013, Transwestern Pipeline Company
RP97–288, 014, Transwestern Pipeline Company
RP97–288, 015, Transwestern Pipeline Company
RP97–288, 016, Transwestern Pipeline Company
G–22.
Docket# RP02–164, 001, PG&E Gas Transmission, Northwest Corporation
G–23.
Docket# PR02–13, 000, Cincinnati Gas & Electric Company
G–24.
Docket# PL02–6, 000, Natural Gas Pipeline Negotiated Rate Policies and Practices

Energy Projects—Hydro

H–1.
Reserved
H–2.
Docket# P–2596, 005, Rochester Gas and Electric Corporation
Other#s P–2596, 003, Rochester Gas and Electric Corporation
H–3.
Docket# P–2622, 011, International Paper Company and Turners Falls Hydro LLC
H–4.
Omitted
H–5.
Omitted
H–6.
Docket# P–9974, 048, Halstead Construction, Inc.
H–7.
Docket# P–7856, 025, Potosi Generating Station, Inc. and Willow Creek Hydro, LLC

Energy Projects—Certificates

C–1.
Reserved
C–2.
Docket# CP02–60, 000, CMS Trunkline LNG Company, LLC
C–3.
Docket# CP01–69, 004, Petal Gas Storage, L.L.C.
C–4.
Docket# CP97–315, 006, Independence Pipeline Company
Other#s CP97–319, 004, ANR Pipeline Company
C–5.
Docket# CP01–422, 000, Kern River Gas Transmission Company
Other#s CP01–422, 001, Kern River Gas Transmission Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–17970 Filed 7–12–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000]

Ridgewood Main Hydro Partners, L.P.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 10, 2002.

On October 18, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Damariscotta Mills Hydroelectric Project (FERC No. 11566–000) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. On February 7, 2002, the Commission issued a notice

modifying the restricted service list in order to include representatives of the Towns of Nobleboro, Jefferson, and Newcastle, and Land & Water Associates. The Damariscotta Mills Hydroelectric Project is located on the Damariscotta River, in Lincoln County, Maine. Ridgewood Maine Hydro Partners, L.P. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

As a result of Commission notice issued July 1, 2002, the following two additions are made to the restricted service list notice issued on October 18, 2001, for Project No. 11566–000:

Jim Kardatzke, Bureau of Indian Affairs, ERO, 711 Stewards Ferry Pike, Nashville, TN 37214.

Franklin Keel, Director, Bureau of Indian Affairs, ERO, 711 Stewards Ferry Pike, Nashville, TN 37214.

In addition to the Bureau of Indian Affairs, the current restricted service list for the Damariscotta Hydroelectric Project is as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Earle G. Shettleworth, Jr., SHPO, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330.

Dr. Arthur E. Spiess, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330.

Kevin Webb, CHI Energy, Inc., 200 Bulfinch Drive, Andover, MA 01810.

Dale Wright, Chair, Town of Nobleboro, 192 US Highway 1, Nobleboro, ME 04555.

Philip Wright, Chair, Town of Newcastle, P.O. Box 368, Newcastle, ME 04553.

Jonathan C. Hull, Esq., P.O. Box 880, Damariscotta, ME 04543.

Rosa Sinclair, Chair, Town of Jefferson, 58 Washington Road, Jefferson, ME 04348.

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109.

Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17811 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Water Act Section 404 State-Assumed Programs

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Clean Water Act Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA No. 0220.08; expiration date January 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Comments should be sent to Lori Williams, at US Environmental Protection Agency, Wetlands Division (4502T), 1200 Pennsylvania Avenue NW, Washington, DC 20460 or *williams.lorraine@epa.gov.* Interested persons may obtain a copy of the ICR without charge by contacting the person identified above and referencing the EPA ICR Number, 0220.08, or by downloading a copy off the Internet at *http://www.epa.gov/icr.*

FOR FURTHER INFORMATION CONTACT: Lori Williams by phone at 202–566–1376; by facsimile at 202–566–1375; or by email at *williams.lorraine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those State/Tribes requesting assumption of the Clean Water Act Section 404 permit program; States/Tribes with approved assumed programs; and permit applicants in States or Tribes with assumed programs.

Title: Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA No. 0220.08; expiration date January 31, 2003.

Abstract: Section 404(g) of the Clean Water Act authorizes States [and Tribes] to assume the Section 404 permit program. States/Tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR part 233) for an approvable program. Specified information and documents must be submitted by the State/Tribe to EPA to request assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision to either approve or deny the State/Tribe's assumption request starts. The information contained in the assumption request is made available to the other involved Federal agencies (Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment.

States/Tribes must be able to issue permits that comply with the 404(b)(1) Guidelines, the environmental review criteria. States/Tribes and the reviewing Federal agencies must be able to review proposed projects to evaluate and/or minimize anticipated impacts. EPA's assumption regulations establish recommended elements that should be included in the State/Tribe's permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements are based on the information that must be submitted when applying for a Section 404 permit from the Corps of Engineers.

EPA is responsible for oversight of assumed programs to ensure that State/Tribal programs are in compliance with applicable requirements and that State/Tribal permit decisions adequately consider and minimize anticipated impacts. States/Tribes must evaluate their programs annually and submit the results in a report to EPA. EPA's assumption regulations establish minimum requirements for the annual report. 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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's currently approved ICR includes 101,440 hours. The State/Tribe's assumption request is a one-time request; a permit application is made each time someone desires to do work that involves the discharge of dredged or fill material into waters of the United States, including regulated wetlands; and a State/Tribe with an approved program must submit an annual report to EPA each year. This collection is split into three pieces:

(i) We estimate that a State/Tribe will need 520 hours (approximately ¼ of a work year) to prepare the documentation for EPA to determine that a State/Tribe's assumption is complete. We estimate that $46,500 (starting point of a GS–11) is an average State/Tribal employee salary. This results in a one-time cost of $11,625. We estimate that two States or Tribes may request program assumption over the next three years. This results in a total one-time burden of 1,040 hours and a total cost of $23,250.

(ii) We estimate that the average time needed to complete a permit application is five hours. The actual time to complete a permit application will vary greatly depending on the size and location of a planned project. Small projects will require less time; large, complex projects could require significantly more time. We estimate that the ''average'' assumed program will process 5,000 permits a year. This results in a burden of 25,000 burden hours per year per assumed program. This figure will vary with the assumed program. It is likely that some State/Tribes will have significantly fewer permit applications requested each year; others may have more. It is impossible to estimate the cost of filing an ''average'' permit application. The application for small projects can be completed by the permit applicant with little cost incurred. The permit application for larger, complex projects may require hiring outside parties such as environmental and engineering firms, surveyors, and lawyers.

(iii) We estimate that a State/Tribe will need 80 hours to collect and analyze the information and prepare the annual report. Using the $46,500 for an average State/Tribal employee salary results in an approximate cost of $1,800 to prepare the annual report.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of 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.

Dated: July 10, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 02–17867 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for National Pollutant Discharge Elimination System (NPDES) Storm Water Program Phase II

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): NPDES Storm Water Program Phase II; EPA ICR No. 1820.03; OMB Control Number 2040–0211, currently expiring on October 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Please send comments on the proposed ICR to Jack Faulk, USEPA, Office of Wastewater Management, Water Permits Division, 1200 Pennsylvania Avenue, NW., EPA East, Room 7329E, Mail Code 4203M, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Please direct questions or a request for a copy of the ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are addressed by the NPDES Storm Water Program Phase II rule, promulgated on December 8, 1999. This includes regulated small municipal separate storm sewer systems (MS4s), small construction sites (1–5 acres in size), and industrial activities eligible for a ''No Exposure Waiver.'' For purposes of the Phase II Rule, regulated small MS4s are defined as those entities that are not already regulated as a medium or large MS4 and that are located in ''urbanized areas'' (UAs) as defined by the Bureau of the Census, and those small MS4s located outside of a UA that are designated by NPDES permitting authorities. This ICR also includes information collection requirements applicable to states that are authorized to administer the NPDES Permitting Program in their respective states.

Title: Information Collection Request for NPDES Storm Water Program Phase II; (OMB Control No. 2040–0211; EPA ICR No. 1820.03) expiring 10/31/02.

Abstract: This Information Collection Request (ICR) addresses Phase II of the NPDES storm water program. Under the Phase II rule, EPA regulates storm water discharges from construction sites with activities disturbing equal to or greater than one acre and less than five acres of land, and small MS4s located in Bureau of the Census-designated ''urbanized areas.'' Additional construction sites and small MS4s may be designated by the NPDES permitting authority. NPDES permits provide the mechanism for establishing appropriate controls on these Phase II sources. The Phase II rule also includes a provision that allows industrial facilities regulated under Phase I of the NPDES storm water program to obtain an exclusion from NPDES permitting requirements if they can certify to a condition of ''no exposure'' on their site.

Permits were not required for small construction sites and regulated small

MS4s during the first three years of the program. The data collection effort during this first three-year period was limited to the submittal and review of no exposure certifications and some preliminary Agency work in developing specific program elements. A significant increase in burden for this ICR is the product of that fact.

After general permits for small MS4s and small construction sites are issued in December of 2002, NPDES permitting authorities, including the Water Permits Division of the EPA Office of Wastewater Management, intend to use the data contained in storm water permit applications, construction waiver certifications, storm water pollution prevention plans (SWPPPs), no exposure certifications, and reports to set appropriate permit conditions, track discharges covered by storm water permits, and assess permit compliance. Other organizations, including EPA's Office of Enforcement and Compliance (OECA) and environmental groups, will most likely use the same collected information to assess the regulated community's level of compliance and to measure the overall effectiveness of the NPDES storm water program.

It is expected that respondents will submit information in hard copy form. The information from them will be entered into a computer database and the original document will be filed. The information will be submitted by the respondents directly to each NPDES-authorized State or Territory, or to EPA in areas where EPA is the NPDES permitting authority. Plans are underway to allow electronic submission of much of the required information but these options are not included in the ICR. At the time those options become available, EPA will update this information collection to reflect a revised burden estimate.

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 EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that 327,119 NPDES entities (consisting of 5,102 small MS4s, 119,112 small construction permittees, 21,020 small construction sites eligible for and receiving a waiver, and 181,885 industrial operators eligible for and receiving the no exposure waiver) will perform activities covered by this ICR. These entities are expected to provide 183,291 responses to State and Federal permit authorities annually. Additionally, 45 states/territories will perform information collection activities. Nationally, NPDES permittees will spend 3,661,312 hours per year on information collection activities as a result of the Storm Water Program Phase II rule (289,794 hours for regulated small MS4s, 21,020 hours for waived small construction sites, 3,323,215 hours for permitted small construction sites, and 27,283 hours for industrial no exposure facilities). The 45 states/territories are expected to spend 211,885 hours per year on information collection activities as a result of the Storm Water Program Phase II rule (11,453 hours for regulated small MS4s, 17,847 hours for waived small construction sites, 151,699 hours for permitted small construction sites, and 30,886 hours for industrial no exposure facilities). Capital and start-up costs associated with the Phase II rule are expected to be negligible. 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.

Dated: June 27, 2002.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 02–17868 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–1]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the renewal package to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 2225A, OECA/OC/AgD, Washington, DC 20460. A copy of this ICR may be obtained from Stephen Howie tel: (202) 564–4146; e-mail: *howie.stephen@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Howie, tel: (202) 564–4146; FAX: (202) 564–0085; e-mail: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected Entities: This action affects entities which import pesticides or devices into the United States.

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1), OMB Number 2070–0020, EPA ICR Number 0152.07, Expiration Date: December 31, 2002.

Abstract: The U.S. Customs regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to insure that EPA is notified of the arrival of pesticides and devices as required by

the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine that they are in compliance with FIFRA.

The form requires identification and address information of the importer or his agent and information on the identity and location of the imported pesticide or device shipment.

When the form is submitted to EPA regional personnel for review it is examined to determine whether the shipment should be released for entry upon arrival or alternatively whether it should be detained for examination. The responsible EPA official returns the form to the respondent with EPA instructions to the U.S. Customs Service as to the disposition of the shipment.

Upon the arrival of the shipment, the importer presents the completed NOA to the District Director of U.S. Customs at the port of entry. U.S. Customs compares entry documents for the shipment with the Notice of Arrival and notifies the EPA Regional Office of any discrepancies which the EPA will resolve with the importer or broker. At this point the shipment may be retained for examination. If there are no discrepancies Customs follows instructions regarding release or detention. If EPA inspects the shipment and it appears from examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions of FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission into the United States.

This reporting requirement is needed to inform the Agency of pesticides arriving in the customs territory of the United States and to ensure compliance with FIFRA by the responsible party importing pesticides. This reporting requirement is needed to meet direct statutory requirements of FIFRA regarding notification of the Agency of such arrivals.

The information collected is used by EPA Regional pesticide enforcement and compliance staff and the Headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. The U.S. Treasury Department (Customs), the Department of Agriculture, the Food and Drug Administration, and other Federal agencies may also make use of this information.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years is estimated to be 0.3 person hours per response.

Respondents/affected entities: 7,000.

Estimated number of respondents: 7,000.

Frequency of responses: 1.

Estimated total annual hour burden: 2,100.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

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.

Dated: July 3, 2002.

Richard Colbert,

Director, Agriculture Division.

[FR Doc. 02–17874 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2003 Drinking Water Infrastructure Needs Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 2003 Drinking Water Infrastructure Needs Survey, EPA ICR #2085.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: A copy of the proposed ICR may be requested from and comments may be mailed to David Travers, Drinking Water Protection Division (Mailcode 4606), Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Copies of the proposed ICR also may be obtained from the Safe Drinking Water Hotline, toll-free at (800) 426–4791. Hours of operation are 9 a.m. to 5:30 p.m. (ET), Monday–Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Travers, (202) 564–4638, fax (202) 564–3757, e-mail: *travers.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which own, operate or regulate community water systems including, but not limited to, owners/operators of community water systems, State Environmental Water Quality Agencies, and State Departments of Health.

Title: 2003 Drinking Water Infrastructure Needs Survey, EPA ICR #2085.01.

Abstract: The purpose of this information collection is to identify the infrastructure needs of community public water systems for the 20-year period from January 2003 through December 2022. EPA's Office of Ground Water and Drinking Water (OGWDW) will collect these data to comply with Sections 1452(h) and 1452(i)(4) of the Safe Drinking Water Act (42 U.S.C. 300h).

EPA will use a questionnaire to collect capital investment information from large (serving more than 50,000 people) and medium (serving more than 3,300 people) community water systems. Participation in the survey is voluntary. Information submitted to EPA as part of the survey will be made

available upon request under the Freedom of Information Act. However, EPA's experience with the previous two surveys indicate that these data are rarely, if ever, requested. The data from the questionnaires will provide EPA with a basis for estimating the nationwide infrastructure needs of community water systems. Also, as mandated by Section 1452(a)(1)(D)(ii) of the Safe Drinking Water Act, EPA uses the results of the latest survey to allocate Drinking Water State Revolving Fund (DWSRF) monies to the States. Under the allotment formula, each State receives a grant of the annual DWSRF appropriation in proportion to its share of the total national need—with the proviso that each State receive at least 1% of the total funds available.

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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that this information collection will involve a total cost burden to the respondents of $1,229,764 and a total hour burden to the respondents of 45,057 hours. There will be no capital, start-up or operation and maintenance costs but the collection will involve a one time response, from 3,790 respondents, of approximately 11.8 hours per respondent. 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.

Dated: July 10, 2002.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–17877 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 02–149; FCC 02–173]

In the Matter of Publix Network Corporations; Customer Attendants, LLC; Revenue Controls Corporations; SignTel, Inc.; and Focus Group, LLC (Publix Companies) Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice; Order to show cause and opportunity for hearing.

SUMMARY: This document is an order for Publix Companies to show cause and give the Publix Companies the opportunity for a hearing before the Commission. The Commission has found that an evidentiary hearing is required to determine whether the Commission should revoke the operating authority of the Publix Companies, the Publix Companies and the principal or principals of the Publix Companies should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission, the Publix Companies are entitled to any of the telecommunications relay services (''TRS'') fund monies that they requested or received from the TRS Fund, and a forfeiture against any or all of the Publix Companies is warranted and, if so, the amount of the forfeiture.

DATES: Effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: David Hunt, Attorney Advisor for Telecommunications Consumers Division, Enforcement Bureau (202) 418–1522.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document regarding EB Docket No. 02–149, released on June 19, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., CY–A257, Washington, DC, 20554, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th SW., CY–B402, Washington, DC, 20554, (202) 863–2893. It is also available on the Commission's website at *http://www.fcc.gov/Daily_Releases/Daily_Business/2002/db0619/FCC–02–173A1.pdf.*

Synopsis

A. Background

1. Telecommunications relay services were created to bring to those with a hearing or speech disability the benefits of telecommunications service that had hitherto been unavailable to that segment of the public by ''provid[ing] the ability for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.

2. The Act requires each common carrier providing voice transmission services to provide TRS in accordance with the standards set forth in Section 64.604 of the Commission's rules. Carriers may do this either by providing TRS directly, or by contracting with a TRS provider. Section 64.604 of the Commission's rules established the TRS Fund, currently administered by the National Exchange Carrier Association (''NECA''), which reimburses TRS providers for the costs of providing interstate TRS. Carriers providing interstate telecommunications services must contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues.

3. Payments from the TRS Fund to TRS providers are based on schedules of payment formulae that NECA files annually with the Commission. These formulae are based on total monthly interstate TRS minutes of use (''MOU''), defined as the MOU for completed interstate TRS calls placed through a TRS center beginning after call set-up and concluding after the last message call unit. TRS providers are eligible to receive payments from the TRS Fund only if they are: (1) TRS facilities operated under contract with and/or by

certified state TRS programs pursuant to § 64.605; (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services pursuant to § 64.604; or (3) interstate common carriers offering TRS pursuant to § 64.604. To be entitled to payments from the TRS fund, TRS providers must submit monthly reports of interstate MOU to NECA.

4. As required by the Act, the Commission has established mandatory minimum standards for all TRS providers. Congress mandated certain of these standards, such as the requirement to operate seven days a week, 24 hours per day pursuant to § 64.604(b)(4) and the prohibition on keeping records of or disclosing the content of TRS calls pursuant to § 64.604(a)(2). The Commission's implementing rules also cover matters such as training, typing speed, and communication competence for the communication assistants. Besides employee qualifications, TRS hardware and access requirements are outlined, as well as reporting functions, payments, contribution computation, and complaint procedures.

5. The Publix Companies have, since 1999, been collecting reimbursements from the TRS Fund for purportedly providing TRS service eligible for compensation under the Commission's rules. The Publix Companies began operating what they described as a TRS center in January 1999 and began submitting MOU reports to NECA in February of that year. From that period until April 2001, the Publix Companies submitted 8,014,815 MOU to NECA as a basis for payment from the TRS Fund. The last billing statement they sent to NECA for compensation from the TRS Fund was dated August 13, 2001, and covered purported TRS MOU for July 2001. The Publix Companies have received reimbursements in excess of $6 million.

6. A random audit of the Publix Companies' TRS operations by NECA in 2001 raised significant questions of whether their relay operations entitled them for the TRS Fund payments that they had requested and received. On June 25, 2001, the Enforcement Bureau (''EB'') issued a subpoena for documents to Publix Network (''EB Subpoena''), together with a letter of inquiry. The Publix Companies responded to both EB and the Common Carrier Bureau (CCB) on July 23, 2001. In its response to CCB, Publix Network stated that once it was given notice of CCB's concerns, it had ''worked diligently to adjust its operations.'' Publix Network further stated that its management believed that Publix Network had always been operating ''in substantial compliance with the TRS minimum standards.''

7. Based on the NECA audit and on the responses received from the Publix Companies to the Commission's inquiries, it appears that the Publix Companies have collected millions of dollars in payments from the TRS Fund without actually having provided TRS services that would have qualified them for reimbursement. It appears that the Publix Companies did not actually provide TRS as defined by the Commission's rules, thus raising a threshold issue about their eligibility for compensation from the TRS Fund. Moreover, there appears to be pervasive misconduct and violations of Commission rules by the Publix Companies. It appears that the Publix Companies violated numerous operational, technical, and functional requirements set forth in the Commission's TRS rules, submitted inflated bills for reimbursement and other false and inadequate data to the TRS Fund Administrator, and made repeated misrepresentations to the Commission. Considered in their totality, it appears that the actions of Publix Network and related companies may have constituted not only multiple, technical violations of the Act and the Commission's rules, but also a deliberate scheme to obtain TRS Fund payments for which these companies were not eligible. In view of the apparent pattern of pervasive misconduct and violations, it appears that the Publix Companies are not qualified, and should not be authorized, to operate as common carriers in the future.

B. Discussion

8. The Publix Companies are eligible to receive payments from the TRS Fund, if at all, only to the extent that they are an interstate common carrier ''offering TRS pursuant to Section 64.604.'' It appears that the services for which the Publix Companies have sought TRS Fund reimbursement fundamentally do not constitute TRS at all. Moreover, to the extent that any TRS was actually provided by the Publix Companies, it appears that it was not ''TRS pursuant to § 64.604,'' because the Publix Companies did not substantially comply with the requirements of that rule.

9. The Commission's definition of TRS requires communication between an individual with a hearing or speech disability and an individual without any such disability. It appears that almost all of the purported calls for which the Publix Companies have sought reimbursement occurred solely between employees of the Publix Companies, and that the CAs did not function as transliterators, but initiated and directed the calls to other employees of the Publix Companies. Thus, these calls were, in effect, calls solely between persons with hearing or speech disabilities.

10. It appears that the calls Publix Companies reported to NECA did not involve calls between persons with hearing or speech disabilities and those without such disabilities. The calls appear to have followed two patterns. In the first, Publix Companies' CAs would place a call to several assistant developers (''ADs'') who were in the employ of Dr. Raanan Liebermann, President of the Publix Network Corporation, through Focus Group, and would ask the ADs several questions as per a prepared ''script.'' These scripted conversations would last four to eight hours a day, five days a week. The ADs, however, were, according to the Publix Companies, all persons with hearing or speech disabilities, and thus required no TRS to communicate among themselves. It appears that the CAs functioned as participants, initiators of these calls. However, payments are only available for interstate TRS calls that are placed by TRS users. In the second pattern, it appears that a moderator was involved in the conference calls along with the CAs and ADs. These moderators were employees of Dr. Liebermann through another of the Publix Companies, SignTel. Apparently, the moderator would call as many as six CAs of the Publix Companies, who in turn would usually contact as many as five ADs each. When a moderator was involved in the call, it appears the he or she would read out the questions per the script, and the CAs would type out via TTY the questions for the ADs. When the ADs responded, however, it appears that the responses were not always forwarded to the moderators. Thus, it appears that the moderator may have served only to create the appearance of actual relay service. Calls such as these do not constitute TRS because they do not facilitate communications between persons with hearing or speech disabilities and persons without such disabilities.

11. The Administrative Law Judge is directed to determine whether the service for which the Publix Companies requested and received payments met the definition of TRS in the Act and the Commission's rules; whether the Publix Companies offered TRS pursuant to Section 64.604, including but not limited to whether they met the operational, technical and functional standards, and met the training, confidentiality, and equal access to

interexchange carriers required of TRS facilities; whether the Publix Companies violated Commission rules by providing inaccurate information (costs and minutes of use) to the TRS Fund Administrator; whether the Publix Companies made intentional misrepresentations or willful material omissions to the Commission; whether the Publix Companies should remain authorized to act as a common carrier; whether the Publix Companies are entitled to any portion of the payments from the TRS Fund that they requested or received; and whether piercing the corporate veil is appropriate to find the affiliated entities equally liable in this alleged scheme.

C. Conclusion

12. In light of the totality of the information now before us, an evidentiary hearing is required to determine whether the continued operation of the Publix Companies as a common carrier would serve the public convenience and necessity within the meaning of Section 214 of the Act. Further, due to the potentially egregious nature of the Publix Companies' apparently unlawful activities, they will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In light of the apparent violations outlined above, it also appears that a forfeiture should be levied against the Publix Companies. Moreover, because our investigation has raised substantial questions whether the Publix Companies are entitled to any of the payments that they have received and requested from the TRS Fund, we will specify an issue to determine the extent to which the Publix Companies are eligible for any payments.

Ordering Clauses

13. Pursuant to Sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 214, the principal or principals of the Publix Companies *are directed to show cause* why the operating authority bestowed on the Publix Companies pursuant to Section 214 of the Communications Act of 1934, as amended, should not be *revoked.*

14. Pursuant to Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b), the principal or principals of the Publix Companies *are directed to show cause* why an order directing them *to cease and desist from the provision of any interstate common carrier services* without the prior consent of the Commission should not be issued.

15. The hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) To determine whether the service the Publix Companies provided met the definition of TRS under § 225(a)(3) of the Act and § 64.601(7) of the Commission's rules;

(b) To determine whether the Publix Companies violated § 64.604(a)(1) of the Commission's rules;

(c) To determine whether the Publix Companies violated Section 225(d)(1)(F) of the Act and § 64.604(a)(2)(i) of the Commission's rules;

(d) To determine whether the Publix Companies violated § 64.604(b)(3) of the Commission's rules;

(e) To determine whether the Publix Companies violated § 64.604(b)(4) of the Commission's rules;

(f) To determine whether the Publix Companies violated § 64.604(c)(3) of the Commission's rules;

(g) To determine whether the Publix Companies violated § 64.604(c)(5)(iii)(C) of the Commission's rules;

(h) To determine whether the Publix Companies violated § 64.604(c)(5)(iii)(E) of the Commission's rules;

(i) To determine whether the MOU generated by the Publix Companies constituted MOU compensable by the TRS Fund;

(j) To determine whether the Publix Companies violated Section 220(e) of the Act by not filing true and accurate data in FCC Form 499–A;

(k) To determine whether the Publix Companies engaged in a pervasive pattern of misrepresentation or lack of candor;

(l) To determine whether the Publix Companies misrepresented or willfully omitted facts in written materials submitted to the Commission, in violation of 47 CFR. Section 1.17;

(m) To determine whether, with respect to the issues (a) through (l) specified above, the Publix Companies knew or should have known that they were committing such violations, whether they acted with the intention of violating a known duty; and whether they acted negligently, or with gross neglect of a known duty;

(n) To determine whether the Publix Companies substantially complied with the requirements of 47 CFR 64.604;

(o) To the extent that the ALJ finds that the Publix Companies were eligible for any TRS Fund reimbursements they requested or received, to determine the number of MOU for which the Publix Companies were entitled to receive reimbursement from the TRS Fund;

(p) To determine, in light of all the foregoing, whether Publix Network's authorization to operate as a common carrier should be revoked;

(q) To determine whether, in light of all the foregoing, Publix Network, the Publix Companies, and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission;

(r) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, Publix Network, Publix Relay, SignTel, RCC, Customer Attendants, Focus Group, and any other related company under the control and direction of Dr. Raanan Liebermann, should, for purposes of this proceeding, be considered one and the same entity.

16. The Chief, Enforcement Bureau, shall be a party to the designated hearing. Pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (r) inclusive.

17. To avail themselves of the opportunity to be heard, the principal or principals of the Publix Companies, pursuant to § 1.91(c) of the Commission's rules, *shall file* with the Commission within 30 days of the mailing of this Show Cause Order a *written appearance* stating that a principal or other legal representative from the Publix Companies will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If the Publix Companies fail to file a written appearance within the time specified, the Publix Companies' right to a hearing *shall be deemed to be waived.* In the event that the right to a hearing a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, *shall terminate* the hearing proceeding as to that entity and *certify* this case to the Commission in the regular course of business, and an appropriate order shall be entered.

18. Irrespective of the resolution of the foregoing issues, the ALJ shall determine, pursuant to Section 503(b)(3)(A) of the Act, 47 U.S.C. 503(b)(3)(A), whether an Order of Forfeiture shall be issued against any or each of the Publix companies and their principal(s) for having willfully and/or repeatedly violated Sections 1.17, 64.601(7), 64.604(a)(1), 64.604(a)(2)(i), 64.604(b)(3), 64.604(b)(4), 64.604(c)(3), 64.604(c)(5)(iii)(C), and/or

64.604(c)(5)(iii)(E) of the Commission's rules, 47 CFR 1.17, 64.601(7), 64.604(a)(1), 64.604(a)(2)(i), 64.604(b)(3), 64.604(b)(4), 64.604(c)(3), 64.604(c)(5)(iii)(C), and/or 64.604(c)(5)(iii)(E) and/or Sections 220(e), 225(a)(3) and 225(d)(1)(F) of the Act, 47 U.S.C. 220(e), 225(a)(3) and 225(d)(1)(F). For each violation, the maximum potential forfeiture liability for the parties, joint and separately, shall be the statutory maximum of $120,000 per violation up to a total of $1,200,000 for each continuing violation committed by a common carrier. This figure is set based upon the seriousness of the alleged violations, the continuing nature of the alleged violations, the apparent culpability of each party, the information available to us concerning the financial condition of each party, and the ability of each party to profit from the alleged rule and/or statutory violations.

19. This document constitutes a *notice of opportunity for hearing* pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(A), for the potential forfeiture liability outlined above.

20. A copy of this *order to show cause and notice of opportunity for hearing* shall be sent by certified mail, return receipt requested, to Dr. Raanan Liebermann, Publix Network Corporation, 79 Bayard Avenue, North Haven, CT 06473, and Gerard Waldron, Esq., Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC, 20004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17829 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report no. 2560]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 3, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by July 31, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time of filing oppositions has expired.

Subject: Communications Assistance for Law Enforcement Act (CC Docket No. 97–213).

Number of Petitions Filed: 1.

Subject: In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153).

Number of Petitions Filed: 16.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 01–341, RM–10346).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17826 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of the Emergency Management Institute Resident Course Evaluation Form, which is used to identify problems with course materials, evaluate the quality of the course delivery, facilities and instructors. This notice corrects the **Federal Register** notice published June 14, 2002, to provide a 60-day comment period beginning the date of this notice. In addition, FEMA will not be requesting approval of this information collection under the emergency processing procedures in the Office of Management and Budget regulation 5 CFR 1320.13, but will follow the normal clearance procedures.

SUPPLEMENTARY INFORMATION: The Emergency Management Institute (EMI) develops courses and administers resident and nonresident training programs in areas such as natural hazards, technical hazards, instructional methodology, professional development, leadership, exercise design and evaluation, information technology, public information, integrated emergency management, and train-the-trainer. A significant portion of the training is conducted by State emergency management agencies under cooperative agreements with FEMA.

In order to meet current information needs of EMI staff and management, the EMI uses this course evaluation form to identify problems with course materials, delivery, facilities, and instructors. This is a resident evaluation form. EMI staff will use the information to monitor and recommend changes in course materials, student selection criteria, training experience, and classroom environment. Reports will be generated and distributed to EMI management and staff. Without the information it will be difficult to determine the need for improvements and the degree of student satisfaction with each course. The respondents are students attending EMI resident courses. The evaluation form will be administered at the end of the course and will take no more than 10 minutes to complete. Contractors will scan the evaluation forms and generate the data reports using a computer program developed by a FEMA program analyst contractor. Evaluation forms are destroyed in accordance with FEMA's records retention schedule.

Collection of Information

Title: Emergency Management Institute Resident Course Evaluation Form.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0237.

Form Number(s): FEMA Form 95–41.

Abstract: Students attending the Emergency Management Institute resident program courses at FEMA's National Emergency Training Center will be asked to complete a course evaluation form. EMI staff and management will use the information to identify problems with course materials and evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local or Tribal Government, Individuals or households, and Federal Government.

Estimated Total Annual Burden Hours: 667.

FEMA Forms	Number of respondents (A)	Frequency ofresponse (B)	Hours per response (C)	Annual Burden Hours (A × B × C)
95–41	4,000	Annually	*10	667
Total				667

*Minutes.

Estimated Cost: $12,850, which includes operational and user costs.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Laurie Wivell, National Emergency Training Center, Training Division (301) 447–1216 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or email *muriel.anderson@fema.gov.*

Dated: July 3, 2002.

Reginald Trujillo,

Branch Chief, Program Services & Systems Branch, Facilities Management & Service Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17770 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Public Assistance Progress Report and Program Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0151.

Abstract: Progress Reports ensure that the Federal Emergency Management Agency (FEMA) and the State have up-to-date information on Public Assistance (PA) program grants. The State submits reports quarterly to the Regional Director for construction projects for which a final payment has not been made. The date of the report will be determined jointly by the State and the Disaster Recovery Manager. The progress report describes the status of project completion dates, and circumstances that could delay a project. The State is expected to impose some reporting requirements for applicants so that they can prepare quarterly reports.

Affected Public: State, Local or Tribal Government and Not-For-Profit Institutions.

Number of Respondents: 222,488.

Estimated Time per Respondent:

FEMA Forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Progress Report	25	4	25	2,500
FEMA Form 90–49	114	53	*10	1,007
FEMA Form 90–91, 90–91A, 90–91B, 90–91C, and 90–91D	564	53	*90	44,838
FEMA Form 90–120	564	53	*10	4,982
FEMA Form 90–121	20	53	*30	530
FEMA Form 90–123	564	53	*15	7,473
FEMA Form 90–124	564	53	*15	7,473
FEMA Form 90–125	564	53	*15	7,473
FEMA Form 90–126	564	53	*15	7,473
FEMA Form 90–127	564	53	*15	7,473
FEMA Form 90–128	114	53	*30	3,021
Total	222,488			94,243

*Minutes.

Estimated Total Annual Burden Hours: 94,243 hours.

Frequency of Response: Quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17769 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Write Your Own (WYO) Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0169.

Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is guarantor of flood insurance coverage for WYO companies, issued under the WYO arrangements. In order to maintain adequate financial control over Federal funds, the NFIP requires that WYO companies submit a monthly financial report. The NFIP examines the data to ensure that policyholder funds are accounted for and appropriately expended.

Affected Public: Business or Other For-Profit.

Number of Respondents: 105.

Estimated Time per Respondent: 33 minutes.

Estimated Total Annual Burden Hours: 693 hours.

Frequency of Response: Monthly.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17909 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1426–DR]

Guam; 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 Territory of Guam (FEMA–1426–DR), dated July 6, 2002, and related determinations.

EFFECTIVE DATE: July 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 6, 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 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of Guam, resulting from Typhoon Chata'an on July 5–6, 2002, 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 (Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of Guam.

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 Territory, 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. If Individual Assistance is later warranted, Federal funds provided under the Individual and Family Grant program 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 William L. Carwile, III 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 Territory of Guam to have been affected adversely by this declared major disaster:

Territory of Guam for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under the Public Assistance program at 75 percent Federal funding.

The Territory of Guam is 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. 02–17775 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 5 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 Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota 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 June 14, 2002:

Beltrami, Clay, Pennington, and Polk Counties for Individual Assistance (already designated for Public Assistance).

Itasca, McLeod, and Wright Counties for Individual 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. 02–17774 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; 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 Montana (FEMA–1424-DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 3, 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 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe storms and flooding beginning on June 8, 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 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Montana.

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, and 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 and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted, Federal funds provided under the Individual and Family Grant program 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 Michael Bolch 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 Montana to have been affected adversely by this declared major disaster:

Glacier, Liberty, Pondera, and Toole Counties and the Blackfeet Indian Reservation for Public Assistance.

All counties and Indian Reservations within the State of Montana 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. 02–17776 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 3 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 Texas, (FEMA–1425–DR), dated July 8, 2002, and related determinations.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas 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 July 4, 2002:

Brown, Caldwell, Eastland, Frio, Goliad, Gonzales, Karnes, La Salle, Real, Taylor and Wilson Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

Atascosa, Guadalupe and Travis Counties for direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174 (already designated for Individual 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. 02–17772 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; 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 Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas 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 July 4, 2002:

Atascosa, Guadalupe and Travis Counties for Individual 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. 02–17773 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

Special Meeting in Observance of the 70th Anniversary of the Federal Home Loan Bank Act

TIME AND DATE: 1 p.m., Thursday, July 18, 2002.

PLACE: Daniel Patrick Moynihan United States Courthouse, Ceremonial Courtroom, 9th Floor, 500 Pearl Street, New York, New York.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Federal Home Loan Bank of New York Capital Plan.
- Consideration of a Resolution Concerning the Federal Home Loan Bank of New York's Participation in Public Financing for Reconstruction of Lower Manhattan.
- Granting of a Restated Organizational Certificate to Replace the Original Lost in the Attack of September 11, 2001.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–17964 Filed 7–12–02; 11:04 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 16 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules

Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title*: Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB control number: 7100–0135
Frequency: Event–generated
Reporters: Consumers
Annual reporting hours: 195 hours
Estimated average hours per response: 20 minutes
Number of respondents: 592
Small businesses are affected.
General description of report: This information collection is voluntary (15 U.S.C. § 57(a)(f)(1)). This information collection is not usually given confidential treatment under the Freedom of Information Act (FOIA). However, if a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5 U.S.C. §§ (b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.
Abstract: The questionnaire is sent to consumers who have filed complaints against state member banks. It is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint investigation process.

2. *Report title:* The Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act
Agency form number: Reg CC
OMB control number: 7100–0235
Frequency: Event–generated
Reporters: State member banks and uninsured state branches and agencies of foreign banks
Annual reporting hours: 331,630 hours
Estimated average hours per response: Initial notice or upon request, 1 minute; Case–by–case hold notice, 3 minutes; Notice of exceptions, 3 minutes; Notice posted where customers make deposits, 15 minutes; Annual notice of new ATMs, 5 hours; Notice of changes in policy, 20 hours; and Notice of nonpayment to depositary bank, 1 minute.
Number of respondents: 1,271
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve does not collect any information, no issue of confidentiality arises.
Abstract: Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Reports:

1. *Report title:* Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A, 2083B and 2083C
OMB control number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 280 hours
Estimated average hours per response: 4 hours
Number of respondents: 70
Small businesses are affected.
General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. §§ 321, 322, and 333). The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request (5 U.S.C. § 552(b)(4)).
Abstract: The application for membership is a required one–time submission, pursuant to Section 9 of the Federal Reserve Act, that collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.
Current Actions: The Federal Reserve proposes to revise the application by replacing a majority of Section I of the application, which applies to de novo banks, with a reference to the new Interagency Charter and Federal Deposit Insurance application form (ICDIA form), recently developed by the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). Two existing items and a footnote in this section would be retained and slightly clarified. One item in Section II of the membership application would be revised slightly, and Section III would remain unchanged. The proposed revisions should improve consistency and make filing of the application more expeditious and less burdensome.

2. *Report title:* Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency form number: FR 2248
OMB control number: 7100–0005
Frequency: Monthly, Quarterly, and Semi–annual
Reporters: Domestic finance companies
Annual reporting hours: 352 hours
Estimated average hours per response: Monthly, 18 minutes; Quarterly, 25 minutes; and Semi–annual, 10 minutes.
Number of respondents: 80
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. § 225(a)). Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. § 552).
Abstract: Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short–term liabilities. For quarter–end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. The supplemental section collects data on asset–backed securities. These data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release

Flow of Funds Accounts of the United States (Z.1), and in the Federal Reserve Bulletin (Tables 1.51, 1.52, and 1.55).

Current Actions: The agency staff proposes three changes to the report. First, because the number of finance companies participating in the monthly survey has declined, the staff proposes to reduce the authorized panel size from 100 finance companies to 80 finance companies. Second, the staff proposes to add four questions about the breakdown of 1–4 family real estate loans. These questions would be answered only for quarter–end months. Third, the staff proposes to add a special addendum section to the report, which would on occasion include additional questions pertaining to financial topics of interest. These addendum questions would be asked up to twice a year. To help ease the reporting burden, these addendum questions would be sent in advance to the respondents.

3. *Report title:* Notifications Related to Community Development and Public Welfare Investments of State Member Banks

Agency form number: FR H–6

OMB control number: 7100–0278

Frequency: Event–generated

Reporters: State member banks

Annual reporting hours: 80 hours

Estimated average hours per response: Investment notice, 2 hours; Application, 5 hours; and Extension of divestiture period, 5 hours.

Number of respondents: Investment notice, 25; Application, 5; and Extension of divestiture period, 1.

Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (12 USC 338a, and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.

Abstract: Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) if the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.

Current Actions: The proposed revision would create a form and checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. To the extent that this voluntary form were used by banks, it would potentially ease their reporting burden by allowing the banks to fill in the form rather than typing a letter containing the required information. The form will also potentially help the Board staff to collect uniform and thorough information about community development and public welfare investments. The checklist would help banks determine whether they must submit a request for prior approval.

4. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K

Agency form number: FR K–2

OMB control number: 7100–0284

Frequency: Event–generated

Reporters: Foreign banks

Annual reporting hours: 700 hours

Estimated average hours per response: 35 hours

Number of respondents: 20

Small businesses are not affected.

General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).

Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office, or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

Current Actions: The application requirements currently are contained in Supervision and Regulation Letter dated March 5, 1992 (SR 92–6). A copy of this letter is available on the Board's public website at http://www.federalreserve.gov/boarddocs/srletters/ . The proposed FR K–2 would consist of a reporting form with filing instructions in addition to the informational requirements currently contained in SR 92–6. The proposed modified and enhanced form FR K–2 would clarify and streamline the information required in international applications and prior notifications and reduce the need for repeated requests for additional information after the application or notification has been filed.

The current FR K–2 was developed in 1992 shortly after the passage of the Foreign Bank Supervision Enhancement Act. Since that time, the Federal Reserve has gained significant experience in processing these types of applications and has over time expanded and modified the list of standard information that should be required in these types of applications and notifications. This expanded list would include information regarding the home country laws and regulations designed to deter and prevent money laundering, terrorist financing and other illicit activities, as well as the policies and procedures in place at the foreign bank to detect and prevent money laundering, terrorist financing, and other illicit activities.

Also, Regulation K has been modified to allow for more proposals to be processed under the prior notification procedures. SR 92–6 currently contains two attachments: one attachment related to information collected in applications to establish a branch, agency, or commercial lending company, and one attachment related to information collected in applications to establish a representative office. The form does not currently contain separate attachments outlining informational requirements for prior notifications. In order to add clarity, the proposed FR K–2 would have separate attachments as follows indicating the required information depending on the type of application or notification.

Attachment A – Information Requested in Connection with Applications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(1) of Regulation K)

Attachment B – Information Requested in Connection with Applications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(1) of Regulation K)

Attachment C – Information Requested in Connection with Notifications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(2)(i)(A) of Regulation K)

Attachment D – Information Requested in Connection with Notifications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(2)(i)(B)(1) – (3) of Regulation K)

Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States.

5. *Report title:* Application for a Foreign Organization to Become a Bank Holding Company

Agency form number: FR Y–1f

OMB control number: 7100–0119

Frequency: Event–generated

Reporters: Foreign Banking Organizations

Annual reporting hours: 360 hours

Estimated average hours per response: 90 hours

Number of respondents: 4

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1842(a) and (c) and 1844(a) through (c)) and by the USA PATRIOT Act, § 327). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).

Abstract: Under the Bank Holding Company Act (BHCA), submission of this application is mandatory for any company organized under the laws of a foreign country seeking initial entry into the United States through the establishment or acquisition of a U.S. subsidiary bank. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served.

Current Actions: Several changes would be made to the FR Y–1f, including: (1) clarifying the application to improve consistency with the FR Y–3 (OMB No. 7100–0121), where applicable; (2) adding language to the instructions for an organization seeking to become a financial holding company (FHC) in accordance with the Gramm–Leach–Bliley Act; (3) adding an item to collect information on the anti–money laundering measures taken by the Applicant and its home country to comply with the requirements of the USA PATRIOT Act; and (4) adding items to collect information regarding the manner in which a foreign bank applicant is supervised by its home country authority(ies) and whether it is able to provide adequate assurances of access to information on its operations and activities, as required by the Foreign Bank Supervision Enhancement Act (FBSEA).

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Minor Clarifications, of the Following Reports:

1. *Report title:* Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock

Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087

OMB control number: 7100–0042

Frequency: On occasion

Reporters: National, State Member, and Nonmember Banks

Annual reporting hours: 881 hours

Estimated average hours per response: 0.5 hours

Number of respondents: 1,758

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 222, 248, 282, 287, 288, and 321). Upon request from an applicant, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552).

Abstract: These applications are required by the Federal Reserve Act and Regulation I and must be submitted to Federal Reserve Banks by organizing and existing member commercial banks requesting the issuance, adjustment, or cancellation of Federal Reserve Bank stock. The applications are necessary in order to obtain account data on a bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* The Quantitative Impact Study

Agency form number: FR 3045

OMB control number: to be assigned

Frequency: One–time

Reporters: Large domestic bank holding companies

Annual reporting hours: 8,000 hours

Estimated average hours per response: 400 hours

Number of respondents: 20

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve, in conjunction with the Office of the Comptroller of the Currency (OCC), plan to survey twenty large bank holding companies (BHCs) as part of a worldwide effort by the Basel Committee on Banking Supervision (the Committee). The Committee plans to survey leading financial institutions from the thirteen countries participating on the Committee as well as many other countries in order to gauge the likely effects of proposed new capital standards for internationally active banking organizations.

The Committee is developing new regulatory capital standards for internationally active banks (the New Basel Capital Accord, or ''Accord'') to replace the current standard that has been in place since 1988. The proposed new Accord would be more complex than the original 1988 Accord in order to address the advances and innovations in financial instruments and risk measurement practices that have occurred during the past decade. In designing new capital requirements, the Committee is seeking a standard that provides adequate safety and soundness to world financial markets and that is also far more sensitive to different levels of economic risk than is available with the current Accord. To do this, Committee members believe they must rely more heavily than before on an institution's internal risk measurement systems and its own quantitative assessment of risk, particularly for the largest, most complex, and highly sophisticated banking organizations. For others, less complex capital standards could suffice.

The Committee has structured a proposed standard that entails two different approaches: a simple standard much like the current Accord and a more complex standard that relies on internal risk measurement systems of banks. The latter, in turn, has two variations, a ''foundation'' and an ''advanced''approach. To ensure that each standard would perform sufficiently well, participants to the survey would be asked to calculate their capital requirements under the current rules and also under each of the proposed alternatives.

Board of Governors of the Federal Reserve System, July 10, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–17761 Filed 7–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph F. Lackey —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10238, Washington, DC 20503 (202–395–7316).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title:* The Ongoing Intermittent Survey of Households
Agency form number: FR 3016
OMB control number: 7100–0150
Frequency: On occasion
Reporters: Households and individuals
Annual reporting hours: 390 hours
Estimated average hours per response: 3.92 minutes
Number of respondents: 500
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.
Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. The University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

2. *Report title:* The Recordkeeping and Disclosure Requirement in Connection with Regulation M (Consumer Leasing)
Agency form number: Reg M
OMB control number: 7100–0202
Frequency: On occasion
Reporters: Consumer lessors
Annual reporting hours: Disclosures, 11,160 hours; and Advertising, 19 hours
Estimated average hours per response: Disclosures, 18 minutes; and Advertising, 25 minutes
Number of respondents: 310
Small businesses are affected.
General description of report: This information collection is mandatory sections 105(a) and 187 of TILA (15 U.S.C. §§ 1604(a) and 1667f) is not given confidential treatment.
Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

3. *Report title:* The Recordkeeping and Disclosure Requirement in Connection with Regulation DD (Truth in Savings)
Agency form number: Reg DD
OMB control number: 7100–0271
Frequency: Account disclosures, 500; Change in terms notices, 1,130; Prematurity notices, 1,015; Disclosures on periodic statements, 12; and Advertising, 12
Reporters: State member banks
Annual reporting hours: 146,644 hours
Estimated average hours per response: Account disclosures, 1.5 minutes; Change in terms notices, 1 minute; Prematurity notices, 1 minute; Disclosures on periodic statements, 8 hours; and Advertising, 30 minutes
Number of respondents: 976
Small businesses are affected.
General description of report: This information collection is mandatory. Section 269 of the Truth in Savings Act (12 U.S.C. § 4308) authorizes the Board to issue regulations to carry out the provisions of the Act. Since the Federal Reserve does not collect any information, the information collection is not given confidential treatment.
Abstract: The Truth in Savings Act and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts.

Board of Governors of the Federal Reserve System, July 10, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–17760 Filed 7–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

In notice document 00–19313, beginning on page 46917, in the issue of Tuesday, August 1, 2000, the Federal Reserve announced final approval of the Monthly Survey of Industrial Electricity Use (FR 2009a,b,c; OMB No. 7100–0057). The notice announced the proposal to discontinue the FR 2009a after a two–year transition period ending August 2002. The Federal Reserve has postponed the discontinuance of the FR 2009a for another year to allow respondents more time to convert to the new classification codes.

The industrial output index is currently being revised to reflect the new North American Industry Classification System (NAICS). The Federal Reserve's G.17 statistical release, ''Industrial Production and Capacity Utilization'', will be published

under NAICS codes beginning in November 2002, replacing the current Standard Industrial Classification (SIC) codes. To facilitate the use of this new index, the Federal Reserve has asked utilities to reclassify their customers using the NAICS codes. To that end, a new version of the Monthly Report of Industrial Electricity Use, the FR 2009c, was created in August 2000 to be used by respondents reporting in NAICS codes. Respondents could continue reporting in SIC codes on the FR 2009a until they had converted over to NAICS codes. The FR 2009a was then to be discontinued at the end of a two–year transition period.

This time frame has proven to be unrealistic for some utilities in the FR 2009 panel and, as a result, the Federal Reserve will continue to use the FR 2009a form. The Federal Reserve prefers NAICS coded data and encourages utilities to make the change. Federal Reserve staff will continue to help utilities make the conversion from SIC codes to NAICS codes.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, M/S 41, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Board of Governors of the Federal Reserve System, July 11,2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–17852 Filed 7–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 30, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Ernest Hazel III Trust and Kay Hammond Hazel, Vero Beach, Florida, as trustee, to gain control of Cardinal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Citizens National Bank of Greater St. Louis, Maplewood, Missouri.

Board of Governors of the Federal Reserve System, July 10, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17759 Filed 7–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, July 22, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18060 Filed 7–12–02; 4:00 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations for Members of the U.S. Preventive Services Task Force

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is inviting nominations of qualified individuals to serve as members on the U.S. Preventive Services Task Force (the Task Force).

AHRQ is now soliciting nominations for members of a standing Task Force. Members will be eligible to serve for three year terms with an option for reappointment. They will meet quarterly for two days in the Washington, DC area and will be responsible for reviewing and commenting on evidence reviews prior to making recommendations. The Task Force will work closely with interested health care organizations.

AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals and organizations may nominate one or more qualified persons for membership on the Task Force.

DATES: To be considered for membership on the Task Force, written nominations should be submitted by September 16, 2002.

ADDRESSES: Submit your responses to: Robert Graham, M.D., ATTN: USPSTF Nominations, Director, Center for Practice and Technology Assessment, Agency for Healthcare Research and Quality, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Barbara Gordon at *USPSTF@AHRQ.GOV.* Responses will be available for inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHRQ will not reply to individual responses, but will consider all nominations in selecting members.

Information regarded as private and personal, such as a nominee's social security number, home and Internet addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public. This is in accord with agency confidentiality policies and Department regulations (45 CFR 5.67).

Basic Nomination Requirements

Each nomination should include a current curriculum vitae and should state that the nominee is willing to serve as a member of the Task Force. AHRQ will ask persons being considered for membership to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, to permit evaluation of possibly significant conflicts of interest. It is anticipated that approximately 8–10 individuals will be invited to serve on the Task Force. (See other important nomination requirements below under Nomination Selection.)

Additional Information about the U.S. Preventive Services Task Force may be obtained by contacting: *http://www.ahrq.gov/clinic/uspstfix.htm.*

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including prevention of diseases and other health conditions, and improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–7 as amended by Public Law 106–129 (1999)).

The Task Force is an independent expert panel, first established in 1984 under the auspices of the U.S. Public Health Service. Currently, under AHRQ's authorizing legislation noted above, the Director of AHRQ is responsible for convening the USPSTF to be composed of individuals with appropriate expertise. The mission of the Task Force is to rigorously evaluate the effectiveness of clinical preventive services and to formulate recommendations for primary care clinicians regarding the appropriate content of periodic health examinations. The first Task Force concluded its work in 1989 with the publication of the Guide to Clinical Preventive Services (the Guide). A second Task Force, appointed in 1990, concluded its work with the release of the second edition of the Guide in December 1995. Programmatic responsibility for the Task Force was transferred to AHRQ in 1995. The 1996 edition of the Guide, evaluating common screening tests, counseling interventions, immunizations and chemoprophylaxis, is available on the Internet (*http://www.ahrq.gov/clinic/uspstfix.htm*) and through the U.S. Government Printing Office, (202) 512–1800 (refer to stock # 017–001–00525–8). In 1998, members of the third Task Force were appointed for five-year terms. The third Task Force has released its recommendations incrementally. These recommendations can be found at *http://www.ahrq.gov/clinic;uspstfix.htm.*

Nomination Selection

Nominations for the Task Force will be selected on the basis of: (1) Clinical expertise in the primary health care of children and/or adults; (2) experience in critical evaluation of research and evidence-based methods; (3) expertise in disease prevention and health promotion; (4) expertise in counseling and behavioral interventions, (5) national leadership within their field of expertise; (6) ability to work collaboratively with peers; and, (7) no substantial conflicts of interest that would impair the scientific integrity of the work of the Task Force. Some Task Force members without primary health care clinical experience may be selected based on their expertise in methodological issues such as medical decision making, clinical epidemiology, and health economics.

Dated: July 9, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17863 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–317]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sampling Plan and Supporting Regulations in 42 CFR 431.800–431.865; *Form No.:* CMS–317 (OMB# 0938–0146); *Use:* The State MEQC sampling plan is necessary for CMS to monitor the States' operation of the MEQC system for States performing the traditional sampling process. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claim collection procedures; *Frequency:* Semi-annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 110; *Total Annual Hours:* 2,640. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown CMS–317, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 5, 2002.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17755 Filed 7–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring (OMB Control Number 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical. In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule in the **Federal Register** (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) . Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products[1] already in place under the authorities of the act and the PHS Act. The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal year 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB until March 31, 2005, under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

In the **Federal Register** of March 14, 2002 (67 FR 11512), the agency requested comments on the proposed collections of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000

[1] The information collection requirements for biological products are no longer submitted for approval to OMB in this package, but are included under OMB control number 0901–0124.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					4,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17784 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0366]

Determination of Regulatory Review Period for Purposes of Patent Extension; PEG-Intron

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PEG-Intron and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions 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: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product PEG-Intron (peginterferon-alfa–2b). PEG-Intron is indicated for treatment of chronic hepatitis C in patients not previously treated with interferon alfa who have compensated liver disease and are at least 18 years of age. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PEG-Intron (U.S. Patent No. 5,951,974) from Schering Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of PEG-Intron represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PEG-Intron is 1,271 days. Of this time, 877 days occurred during the testing phase of the regulatory review period, while 394 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 30, 1997. The applicant claims July 29, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 30, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: December 23, 1999. The applicant claims December 22, 1999, as the date the product license application (BLA) for PEG-Intron (BLA 99–1488) was initially submitted. However, FDA records indicate that BLA 99–1488 was submitted on December 23, 1999.

3. *The date the application was approved*: January 19, 2001. FDA has verified the applicant's claim that BLA 99–1488 was approved on January 19, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 435 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17783 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1348]

Determination of Regulatory Review Period for Purposes of Patent Extension; Protonix

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Protonix and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Protonix (pantoprazole sodium). Protonix is indicated for short-term treatment (7 to 10 days) of gastroesophageal reflux disease (GERD). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Protonix (U.S. Patent No. 4,758,579) from BYK Gulden Lomerg Chemische Fabrik GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 17, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Protonix represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Protonix is 3,401 days. Of this time, 2,818 days occurred during the testing phase of the regulatory review period, while 583 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 13, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 13, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 30, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Protonix (NDA 20–987) was initially submitted on June 30, 1998.

3. *The date the application was approved*: February 2, 2000. FDA has verified the applicant's claim that NDA 20–987 was approved on February 2, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17781 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0019]

Determination of Regulatory Review Period for Purposes of Patent Extension; Axert

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Axert and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Axert (almotriptan malate). Axert is indicated for acute treatment of migraine with or without aura in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Axert (U.S. Patent No. 5,565,447) from Almirall Prodesfarma S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Axert represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Axert is 1,348 days. Of this time, 843 days occurred during the testing phase of the regulatory review period, while 505 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 30, 1997. The applicant claims August 29, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 30, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 20, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for Axert (NDA 20–001) was initially submitted on December 20, 1999.

3. *The date the application was approved*: May 7, 2001. FDA has verified the applicant's claim that NDA 20–001 was approved on May 7, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 569 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17782 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for Lake Umbagog National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan (CCP) and associated Environmental Impact Statement (EIS) for Lake Umbagog National Wildlife Refuge (NWR) pursuant to the National Environmental Policy Act and its implementing regulations. Lake Umbagog NWR is located in Coos County, New Hampshire and Oxford

County, Maine. The planning process will also include a Wilderness Review of existing refuge lands, in accordance with the Wilderness Act of 1964, as amended, and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies and the public of our intentions, and

(2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: The Service will hold a series of public scoping meetings early in the planning process to help identify issues of concern and gather comments from the public:

- Tuesday, July 30, 6:30 p.m., Errol Town Hall, Errol, New Hampshire;
- Thursday, Aug. 1, 6:30 p.m., New Hampshire Community Technical College, Berlin, New Hampshire;
- Friday, Aug. 2, 6:30 p.m., Bethel Inn, Bethel, Maine.

Remaining to be scheduled this summer are meetings in Augusta, Maine and Concord, New Hampshire.

Inquire at the address below for dates and locations of future planning activities, or to be added to our mailing list. Further notice announcing times and locations of public meetings, public hearings, and release of a draft CCP and EIS will be published in local news media.

ADDRESSES: Address comments, questions and requests for more information to the following: Refuge Manager, Lake Umbagog National Wildlife Refuge, P.O. Box 240, Errol, New Hampshire 03579, (603) 482–3415, e-mail: *fw5rw_lunwr@fws.gov.*

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. It will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies. The planning process will evaluate many elements, including habitat and wildlife management, additional land protection and refuge expansion, public use, and cultural resource protection. Public input into this planning process is essential.

The Service will solicit public input via public meetings, workshops, and written comments. Special mailings, newspaper articles, webpages, and announcements will inform people of the time and place of such opportunities for public input to the CCP. Lake Umbagog NWR includes 16,300 acres of fresh water marsh and forest surrounding the 8,500-acre Umbagog Lake on the New Hampshire and Maine border. A draft CCP and EIS is planned for public review in the fall of 2003. You can view the project's Web page at *http://northeast.fws.gov/planning/umbagog.htm.*

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: June 21, 2002.

Richard O. Bennett,

Deputy Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 02–17758 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt.

The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–TE058917–0

Applicant: U.S. Fish and Wildlife Service, Virginia Field Office

The applicant requests authorization to take (collect and kill) glochidia of two Federally listed endangered freshwater mussels, dwarf wedge mussel (Alasmidonta heterodon) from Sullivan County, New Hampshire, and oyster mussel (Epioblasma capsaeformis), from Scott County, Virginia and Hancock County, Tennessee. Acute and chronic toxicity tests will be conducted to determine effect levels on imperiled mussels.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: 413–253–8628; Fax: 413–253–8482.

Dated: July 3, 2002.

Richard O. Bennett,

Acting Regional Director.

[FR Doc. 02–17788 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Public Workshops for the Draft Conservation Strategy for the Tahoe Yellow Cress (*Rorippa subumbellata* Roll.)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that public workshops will be held to introduce the Draft Conservation Strategy for the Tahoe Yellow Cress (*Rorippa subumbellata* Roll.), a candidate species for listing.

DATES: Four public workshops will be held. Two workshops will take place on July 23, 2002, from 2 to 4 p.m. and 5 to 7 p.m.; and two on July 25, 2002, from 2 to 4 p.m. and 5 to 7 p.m.

ADDRESSES: The public workshops on July 23, 2002, will be held at the El Dorado Public Library in the City of South Lake Tahoe, California, and the workshops on July 25, 2002, will be held at the North Tahoe Conference Center in Kings Beach, California. The Draft Conservation Strategy is available for review on the Tahoe Regional Planning Agency's Web site at *http://www.trpa.org/tyc/Draft_strategy.html,* or hard copies may be requested by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502. Written comments will be accepted at the workshops or may be

sent to the Field Supervisor. You may also send comments by electronic mail (e-mail) to *fw1tyc@r1.fws.gov.* Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: Tahoe yellow cress'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Nevada Fish and Wildlife Office at telephone number 775–861–6300.

FOR FURTHER INFORMATION CONTACT: Jody Fraser, Nevada Fish and Wildlife Office, at the above address and telephone; (facsimile 775–861–6301).

SUPPLEMENTARY INFORMATION:

Background

Tahoe yellow cress (*Rorippa subumbellata* Roll.), a member of the mustard family (Brassicaceae), is restricted to the shores of Lake Tahoe in California and Nevada. This species is a small perennial herb with somewhat fleshy stems and leaves and small yellow flowers. It is primarily found growing in coarse to medium sand, near the mouths of streams or in back-beach depressions around the shore of the lake.

Because of its limited distribution and threats facing the species (*see* discussion below), a Draft Conservation Strategy has been developed to promote the cooperative protection and management of Tahoe yellow cress and its habitat. The public workshops are being held to provide a brief overview of the Conservation Strategy, introduce the objectives of this cooperative effort, and encourage public involvement.

The distribution and habitat of Tahoe yellow cress are limited. The majority of sites supporting this species are found on the west and south shores in California where appropriate habitat is relatively common. There is limited suitable habitat on the east shore in Nevada, which is largely dominated by boulders and rocky cliffs. It grows almost exclusively between the elevations of 1,898 m (6,223 ft) and 1,900 m (6,230 ft). During years with high lake levels, most of the available habitat is inundated, but the plant has been observed to recolonize newly-exposed beaches after being inundated between 2 to 4 years (Josselyn *et al.* 1992).

Surveys for Tahoe yellow cress have been conducted throughout the Lake Tahoe region since 1979. Historically, a total of 51 occurrences of this taxon have been documented from around the lakeshore; however, the plant has never been observed at all sites at any one time. Survey results through the year 2000 showed that Tahoe yellow cress occupied only 27 percent of the known, historic sites. Evidence suggests the decline in the number of sites occupied by Tahoe yellow cress is primarily due to: (1) Alterations in lake level dynamics caused by construction and operation of the Truckee River outlet dam and reservoir; (2) destruction of known and potentially suitable habitat by the construction of piers, jetties, and other structures; (3) high levels of recreational activity associated with beaches; (4) disturbance of habitat by public and private property maintenance activities; and (5) possibly stochastic environmental events. While we recognize that this species is apparently adapted to a highly dynamic environment, human-induced factors caused us to evaluate the status of the species and ultimately designate it as a candidate for listing.

On February 28, 1996, we published in the **Federal Register** (61 FR 7595) a Notice of Review of plant and animal taxa that are candidates for listing as endangered or threatened. This combined notice also presented revised candidate lists which eliminated the separation of species into three categories. The former system led many people to the mistaken conclusion that the addition of thousands of species to the endangered list was imminent. Under the revised list, only category 1 candidate species for which there was enough information to support a listing proposal would be considered ''candidates.'' In the February 28, 1996, Notice of Review, we removed Tahoe yellow cress from the candidate list because the available information did not support issuance of a proposed listing. Following an updated assessment of the status of Tahoe yellow cress and its increasing vulnerability to threats, we included this taxon as a candidate species in the Notice of Review published in the **Federal Register** on October 25, 1999 (64 FR 57533).

Tahoe yellow cress has been documented on lands administered by the United States Forest Service (USFS), Lake Tahoe Basin Management Unit (LTBMU), the State of California Department of Parks and Recreation (CDPR), the State of Nevada Division of State Parks (NDSP), Placer and El Dorado county lands, City of South Lake Tahoe lands, and on private lands.

Activities within the Lake Tahoe shorezone, on both public and private lands, are regulated under various agency policies and management directions, many of which include provisions for protection of this species. However, despite these protective mechanisms, current protection is not adequate. Because of the imminent threats facing the species, a task force has been formed to develop and implement a conservation strategy for Tahoe yellow cress. The strategy is coupled with a Memorandum of Understanding/conservation agreement (MOU/CA) that will be signed by the current participants to demonstrate their long-term commitment to protection of the species. Parties who wish to take a more active role in conservation of this species may be added to the MOU/CA in the future. Implementation of this strategy is a cooperative effort being carried out under the auspices of a multi-agency and private interest group task force. Success of this strategy is largely dependent upon voluntary participation and coordination among parties.

Public Meeting

Public workshops to introduce the Draft Conservation Strategy for Tahoe yellow cress are scheduled to be held on July 23, 2002, from 2 to 4 p.m. and 5 to 7 p.m. at the El Dorado Public Library in the City of South Lake Tahoe, California, and on July 25, 2002, from 2 to 4 p.m. and 5 to 7 p.m. at the North Tahoe Conference Center in Kings Beach, California. Please contact the Nevada Fish and Wildlife Office at the above address with any questions concerning these public workshops.

Public Comments

We will accept comments on the Draft Conservation Strategy through August 8, 2002. Prepared comments will also be accepted at the public workshops. Written comments should be submitted to the Field Supervisor of the Nevada Fish and Wildlife Office in the **ADDRESSES** section.

Dated: July 9, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Region 1.

[FR Doc. 02–17886 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–02–1020–PG]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on August 8–9, 2002, at the Farmington Field Office, 1235 La Plata Highway, Farmington, NM, beginning at 8 a.m. both days. An optional Field Trip is planned for Wednesday, August 7. The meeting will adjourn at approximately 5 p.m. both days. The three established RAC subcommittees may have a late afternoon or an evening meeting on Thursday, August 8. The public comment period will begin at 10 a.m. on Friday, August 9, and end at 12 noon.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. At this meeting, topics we plan to discuss include:

Range restoration and the oil and gas industry

Feedback from the Rancher Subgroup from the May 2002 Farmington Oil and Gas Meeting

Update on Otero Mesa Mediation Assessment

Reflection/Learning from Otero Mesa

Renewable Energy

Collaborative land use planning and other topics.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. New Mexico RAC meetings are coordinated with the representative of the Governor of the State of New Mexico, the Office of the Lieutenant Governor.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: June 25, 2002.

Richard A. Whitley,

Acting State Director.

[FR Doc. 02–17785 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 668–02–1610–DO–083A]

DEPARTMENT OF AGRICULTURE

United States Forest Service

Monument Advisory Committee Meeting Schedule Public Comment Time Change

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of change in time for public comment period at meetings. The Monument Advisory Committee desires to change the afternoon comment period previously designated as 3:30 p.m.–4 p.m. The afternoon public comment period will now take place from 1 p.m.–1:30 p.m., with the morning public comment period remaining 9 a.m.–9:30 a.m.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces a change in time for the afternoon public comment period from 3:30–4 p.m. to 1–1:30 p.m. OSC for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as ''National Monument''). The meetings where this time change will go into effect will be held on the following dates:

- Saturday, August 3, 2002
- Saturday, October 5, 2002
- Saturday, December 7, 2002
- Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9 a.m. until 4 p.m. although meetings may be adjourned prior to 4 p.m. There will be a half hour dedicated to public input during both the first half hour of the meeting and after lunch starting at 1 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/*). The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: August 3, 2002; October 5, 2002; December 7; 2002; February 1, 2003; All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 9 to 9:30 a.m. and an afternoon public comment period from 1 to 1:30 p.m. Meetings may adjourn prior to 4 p.m.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, PO Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov.* Information can be found on our web page: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of

respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: June 11, 2002.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 02–17777 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[62½% to CO–956–1420–BJ–0000–241A; 12½% to CO–956–9820–BJ–CO03–241A; 12½% to CO–956–1420–BJ–CAPD–241A; 12½% to CO–956–1910–BJ–4667–241A]

Colorado: Filing of Plats of Survey

June 27, 2002.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 27, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and survey of certain mineral claims in Protracted T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1339, Colorado, was accepted April 22, 2002.

The plat (in 11 sheets) representing Amended Protraction Diagram No. 18, which covers the protracted areas in Townships 49, 50, and 51 North, Ranges 17, 18, 19, and 20 West, New Mexico Principal Meridian, Colorado, was accepted April 30, 2002.

The plat representing the dependent resurveys and surveys in T. 6 S., R. 91 W., Sixth Principal Meridian, Group 1290, Colorado, was accepted May 1, 2002.

The plat representing the corrective dependent resurveys in T. 35 N., R. 1 W., New Mexico Principal Meridian, Group 1266, Colorado, was accepted June 6, 2002.

The plat representing the entire record of the dependent resurvey and survey of section 7, T. 1 N., R. 72 W., Sixth Principal Meridian, Group 875, Colorado, was accepted June 10, 2002.

These surveys were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the retracement and dependent resurvey in T. 32 N., R. 13 W., New Mexico Principal Meridian, Group 1286, Colorado, was accepted April 8, 2002.

This survey was requested by the Bureau of Indian Affairs for administrative and management purposes.

The plat representing the dependent resurveys and surveys in T. 41 N., R. 9 W., New Mexico Principal, Group 1330, Colorado, was accepted May 23, 2002.

The plat representing the entire record of the survey between Protracted Blocks 44 and 45, in Protracted T. 42 N., R. 7 W., New Mexico, Group 1297, Colorado, was accepted June 27, 2002.

These surveys were requested by the U.S. Forest Service for administrative and management purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 02–17787 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified: The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 21, in T. 14 S., R. 27 E., Boise Meridian, Idaho, was accepted May 23, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 10, 14, and 15, and the survey of the 1999–2000 meanders of the Blackfoot River in sections 10, 11, and 14, the North Boundary of the Fort Hall Indian Reservation in sections 10, 11, and 14, and portions of the 1999–2000 median line of the Blackfoot River in sections 10 and 11, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted May 24, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the north boundary, portions of the subdivisional lines, and portions of the subdivision of section 2, in T. 12 S., R. 19 E., Boise Meridian, Idaho, was accepted May 31, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the north and west boundaries, and of the subdivisional lines, and the subdivision of section 3, in T. 7 N., R. 39 E., and the dependent resurvey of portions of the east and south boundaries, in T. 8 N., R. 38 E., Boise Meridian, Idaho, were accepted June 7, 2002. The plats were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the corrective dependent resurvey of portions of the north and west boundaries, of the subdivisional lines, and of the subdivision of section 6, and the dependent resurvey of a portion of the subdivisional lines, in T. 12 S., R. 22 E., Boise Meridian, Idaho, was accepted

June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of section 7, in T. 3 S., R. 5 E., Boise Meridian, Idaho, was accepted June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The supplemental plat was prepared to correct certain lotting on the plat accepted December 21, 2001, in T. 4 S., R. 35 E., Boise Meridian, Idaho, was accepted June 20, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plats of the following described lands, accepted for the Director on the dates specified, are pending official filing in the Idaho State Office, Bureau of Land Management, Boise, Idaho:

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 30, the metes-and-bounds survey of the center line strip of land in section 30, and the metes-and-bounds survey of parcels A, C, and D in section 30, in T. 3 N., R. 4 E., Boise Meridian, Idaho, was accepted November 30, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivision of section 20, and the survey of the 2001 meanders of Crow Island and two unnamed islands in the Snake River, in T. 7 N., R. 5 W., Boise Meridian, Idaho, was accepted December 7, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the 5½ Standard Parallel North, on the south boundary of Township 26 North, Range 1 East, the subdivisional lines, the boundaries of certain mineral and segregation surveys in sections 11, 12, and 14, the record meanders of the Salmon River in sections 2 and 11, and the subdivision of section 11, and the further subdivision of section 11, and subdivision of section 2, and the survey of a portion of the 2000 meanders of the Salmon River in sections 2 and 11, and the Salmon River Scenic Easement boundary line through the S1/2 of the SE1/4 of the NW1/4 of section 2, in T. 25 N., R. 1 E., Boise Meridian, Idaho, was accepted May 15, 2002.

The plat was prepared to meet certain administrative needs the Bureau of Land Management. The plats representing the dependent resurvey and corrective dependent resurvey of a portion of the subdivisional lines and subdivision of section lines in section 7, and the subdivision of sections 19 and 30, in T. 5 N., R. 1 E., Boise Meridian, Idaho, and the plat representing the corrective dependent resurvey of a portion of the Boise Meridian (east boundary), and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 24 and 25, in T. 5 N., R. 1 W., Boise Meridian, Idaho, were accepted May 31, 2002. The plats were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the entire survey record of the dependent resurvey of a portion of the 1910 meander lines of the right bank of the South Fork of the Payette River, and the metes-and-bounds survey of lot 10, in section 20, in T. 9 N., R. 4 E., Boise Meridian, Idaho, was accepted June 14, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: June 28, 2002.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 02–17786 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for the Lake Management Plan, Lake Mead National Recreation Area, Mohave County, Arizona and Clark County, NV; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Lake Management Plan for Lake Mead National Recreation Area. The DEIS describes and analyzes four alternatives to improve the management of Lakes Mead and Mohave to provide for the long-term protection of park resources while allowing a range of recreational opportunities to support visitor needs.

Specifically, this environmental impact statement evaluates four alternatives for managing the waters and associated shoreline areas of Lake Mead National Recreation Area. Each alternative identifies proposed actions related to recreational opportunity zoning and shoreline zoning, developed areas, facilities and recreational services, recreational conflicts, sanitation and litter, resource protection, and park operations.

This document also is used to make reasoned decisions about whether to continue personal watercraft use at Lake Mead NRA. NPS will make the determination based on the unit's enabling statute, mission, management objectives, resources, values, and other uses, as well as impacts from personal watercraft on the unit (65 FR 15,078—2000). In addition, this DEIS evaluates personal watercraft use within Lake Mead National Recreation Area. Consistent with *Bluewater Network* v. *Stanton,* No. CV02093 (D.D.C. 2000) and the settlement agreement approved by the court on April 11, 2001, the DEIS includes an evaluation of various personal watercraft use alternatives to determine their effects on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, safety, and other appropriate topics.

Scoping: Public meetings were initiated in January, 1993 to solicit early input into the scope and range of issues to be analyzed. A notice of intent announcing the decision to prepare the Lake Management Plan and Environmental Impact Statement was published in the **Federal Register** on May 3, 1993. Between January 1993 and September 2000, a series of public scoping meetings were held throughout the area to solicit early input into the scope and range of issues to be analyzed. Scoping comments continued to be accepted and considered until December 2001.

During this comment period, the NPS facilitated over 100 discussions and briefings to park staff, congressional delegations, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public. Nearly 1,000 letters concerning the DEIS planning process were received. The major issues raised during this period are summarized in Chapter 1, Purpose and Need for the Action.

Proposed Plan and Alternatives: The DEIS includes three ''action'' alternative and one ''no action'' (existing conditions) alternative. Under all the action alternatives, a Special Regulation would be promulgated to address the

continued use of personal watercraft in the recreation area, in accordance with settlement agreement signed by the United States District Court for the District of Columbia on April 12, 2001. This agreement between the NPS and Bluewater Network requires all park units wishing to continue personal watercraft use to promulgate special regulations after an environmental analysis is conducted in accordance with the 1969 National Environmental Policy Act.

Alternative A: No Action, evaluates the impacts from the continuation of the present management direction, as established by the 1986 General Management Plan for Lake Mead NRA. Under this alternative, the lakes would be managed for rural and urban recreational settings, with no restrictions on motorized use except where specifically marked by buoys. Management zoning of recreational activities would continue in the Boulder Beach (Lake Mead) and Katherine Landing (Lake Mohave) areas. Facility expansion authorized under the General Management Plan would occur as funding and resources become available. No new measures to improve water quality and shoreline sanitation would be implemented. No special regulations related to personal watercraft use would be promulgated, therefore, personal watercraft use would be prohibited after September 15, 2002. No regulation would be promulgated to restrict the use of two-stroke engines.

Alternative B emphasizes the primitive recreational opportunity for visitors, imposing the most limits on motorized water recreation, and furnishing the greatest opportunity for solitude. Development would be capped at existing levels, and some uses, such as overnight camping, may be reduced or eliminated from some areas. A boat carrying capacity would be established for both lakes and a 100-foot wakeless zone would be established along the shoreline of the lakes. Boater education would be offered, but not required. The use of portable toilets would be voluntary. The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be adopted at Lake Mead NRA. The NPS would develop a new regulation requiring the exclusive use of the new direct-injection two-stroke engines, or the equivalent, for motorized vessels within one year of the approval of this plan.

Alternative C, the preferred alternative, slightly increases the overall level of boating activity. Primitive and semi-primitive areas would comprise about 2 percent of the water surface area. Facility expansion could occur at several existing developed areas: Cottonwood Cove on Lake Mohave and Overton Beach, Echo Bay, Callville Bay and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave, and at Stewarts Point on Lake Mead. This alternative also proposes the construction of an access road to improve lake access from Northshore Road. Carrying capacities would be used to reduce crowding. Shoreline zoning to separate recreational uses would be further developed at the Boulder Basin and Katherine Landing areas and a 100-foot wakeless zone would be established along the shoreline of the lakes. The NPS would work with the states to develop uniform boating laws and mandatory boater education programs. Alcohol consumption while operating a boat would be prohibited. Sanitation and public education requirements would be implemented and a clean-up program initiated. Glass containers and styrofoam would be prohibited within the park. The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be adopted at Lake Mead NRA. The NPS would develop a new regulation requiring the exclusive use of the new direct-injection two-stroke engines, or the equivalent, for motorized vessels starting in 2012.

Alternative D, proposes managing the waters of the recreation area for concentrated use. A greater percentage of the lakes would be designated as urban park, with no areas designated as primitive or semi-primitive. Facility expansion could occur at several existing developed areas: Cottonwood Cove on Lake Mohave and Overton Beach, Echo Bay, Callville Bay and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave, and at Stewarts Point on Lake Mead. Marina expansion would increase the number of slips proposed in Alternative C. Shoreline zoning would be mandatory and exclusive. A 300-foot wakeless zone would be established along the shoreline of the lakes. This alternative would have the same boater education and shoreline sanitation requirements as the proposed action. Alcohol and glass containers would be banned from the recreation area. No regulation would be promulgated to restrict the use of two-stroke engines.

Comments: The DEIS is now available for public review. Interested persons and organizations wishing to express any concerns or provide relevant information are encouraged to contact the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, or via telephone at (702) 293–8986. A postcard will be sent to agencies and individuals notifying them of the availability of the DEIS. The document may be obtained from the park (printed copy or CD copy); it is also available at area libraries, or electronically via the Lake Mead National Recreation Area website *http://www.nps.gov/lame/LMPdraft/home.htm.*

All written comments must be postmarked no later than 60 days from the date the Environmental Protection Agency posts its notice of filing in the **Federal Register**. The end date for the comment period is not known at this time. Immediately upon determination of this end date, a postcard will be sent to agencies and individuals on the mailing list, and it will be announced on the park website.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and business; and, anonymous comments may not be considered.

Public Meetings: The NPS will conduct several public meetings to facilitate public review and comment on the DEIS. Although the logistics for these meetings are not yet confirmed, NPS will make this information available in the near future through press releases and via the park website. Current details on meeting locations, times, and dates can also be obtained by contacting Park Planner, Jim Holland, at the above address, or by telephone at (702) 293–8986.

Decision: Following the formal DEIS review period, comments received will be considered in preparing the Final EIS (FEIS). The FEIS is anticipated to be completed during summer 2002—its availability will be similarly announced in the **Federal Register**. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. The Record of Decision may be approved by the Regional Director not sooner than 30 days after the release of the FEIS; subsequently the official responsible for implementation would be the

Superintendent, Lake Mead National Recreation Area.

Dated: March 27, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–17907 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement\General Management Plan, Lassen Volcanic National Park, Lassen, Plumas, Shasta and Tehama Counties, CA; Notice of Approval of Record of Decision

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement/General Management Plan for Lassen Volcanic National Park. The no-action period was initiated November 9, 2001, with the U.S. Environmental Protection Agency's **Federal Register** (V66, N218, P56673) notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision: As soon as practical the National Park Service will begin to implement the General Management Plan described as the Proposed Action (Alternative C) contained in the FEIS, issued in August, 2001. This alternative was deemed to be the ''environmentally preferred'' alternative, and it was further determined that implementation of the selected actions will not constitute an impairment of park values or resources. This course of action and three additional alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was distributed in August 2000). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, California 96063–0100; or via telephone request at (530) 595–4444.

Dated: February 25, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–17906 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Navajo National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Navajo National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a draft Environmental Impact Statement and General Management Plan for Navajo National Monument, Arizona.

DATES: The draft Environmental Impact Statement and General Management Plan will remain available for public review for 60 days after publication of this notice. No public meetings are scheduled at this time.

Comments: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Navajo National Monument, HC 71, Box 3, Tonalea, Arizona 86044–9704. You may also comment via the Internet to *Suzy__Stutzman@nps.gov.* Please submit Internet comments either as an ASCII file avoiding the use of special characters and any form of encryption, as a Microsoft Word file, or as a Word Perfect file. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling Suzy Stutzman at 303–987–6671. Finally, you may hand-deliver comments to the Navajo National Monument visitor center or the Intermountain Support Office—Denver, 12795 W. Alameda Parkway, Lakewood, CO (room 186).

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 also 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 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.

ADDRESSES: Copies of the draft Environmental Impact Statement and General Management Plan are available from the Superintendent, Navajo National Monument, HC 71, Box 3, Tonalea, Arizona 86044–9704. The plan is also available on the internet at: *http://www.nps.gov/planning/nava.*

Public reading copies of the document will be available for review at the following locations: Office of the Superintendent, Navajo National Monument, Tonalea, Arizona 86044, Telephone: 928–672–2700. Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 987–6671. Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Navajo National Monument at the above address and telephone number.

SUPPLEMENTARY INFORMATION: This general management plan will guide the management of Navajo National Monument for the next 15 to 20 years. The general management plan considers three alternatives—a no-action and two action alternatives, including the National Park Service preferred alternative. The preferred alternative would carefully manage the monument's existing land base and emphasize partnerships and cooperation with American Indian tribes and others to protect Navajo National Monument's resources and promote visitor understanding of the entire region. Opportunities for more innovative and diverse programs, education and outreach, cross-training, and broader resource management would be greatly enhanced by a collaborative regional effort.

The draft environmental impact statement assess impacts to cultural resources (archeological resources, historic structures, cultural landscapes, ethnographic resources, and museum collections); natural resources (water resources, wetlands and floodplains, soils, vegetation, wildlife, and threatened, endangered, candidate, and

species of special concern); visitor understanding and experience; remoteness; the monument's socio-economic environment; and monument operations.

Dated: April 10, 2002.

Michael D. Sunder,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 02–17802 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve

AGENCIES: National Park Service, Interior.

ACTION: Extension of the public scoping period.

SUMMARY: The National Park Service (NPS) announces that the public scoping period for the Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve, published in the **Federal Register** on February 22, 2002 (67 FR 8313), was extended through June 7, 2002. The original scoping period was through April 23, 2002.

DATES: Comments concerning the scope of this project were accepted through June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, National Park Service, Alaska Support Office, 2525 Gambell Street, Anchorage, Alaska 99503. Telephone (907) 257–2651, Fax (907) 257–2517.

Dated: April 10, 2002.

Marcia Blaszak

Acting Regional Director, Alaska Region.

[FR Doc. 02–17805 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Schuylkill River Valley National Heritage, Management Plan Update

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Schuylkill River Valley National Heritage Management Plan Update.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Plan Update for the Schuylkill River Valley National Heritage Area. The Schuylkill River Valley National Heritage Act of 2000 requires the Schuylkill River Greenway Association, with guidance from the National Park Service, to prepare an update of their 1995 Schuylkill Heritage Corridor Management Action Plan. The Management Plan Update is expected to include: (A) Actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area; (B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historical, recreational, or scenic significance; (C) a recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability; (D) a program for implementation of the management plan by the management entity; (E) an analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this title; and (F) an interpretation plan for the Heritage Area.

The study area, designated as the Schuylkill River Valley National Heritage, includes parts of the counties of: Schuylkill, Berks, Chester, Montgomery and Philadelphia in southeastern Pennsylvania as associated with the Schuylkill River corridor.

The National Park Service (NPS) maintains two park sites within the region: Valley Forge National Historical Park and the Hopewell Furnace National Historic Site. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Schuylkill River Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

The EIS will address a range of alternatives—they include a no-action alternative and other action alternatives. The impacts of the alternatives will be assessed through the EIS process.

A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION PLEASE CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov,* 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also 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. 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: December 18, 2002.

Dale Ditmanson,

Associate Regional Director, Park Operations and Education, Northeast Region.

Editorial Note: This document was received at the Office of the Federal Register on July 11, 2002.

[FR Doc. 02–17801 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa, Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 9 a.m. to 2 p.m., Saturday, July 27, 2002, in the village of Olosega, Olosega Island,

American Samoa. In case of flight cancelations to the island of Olosega an alternative meeting site will be at Pago Plaza, Pago Pago, American Samoa. The same date and time period will be used. The agenda for the meeting will include:

Roll Call, Welcome and introductions
Approval of the minutes of the last two meetings
Superintendents report and discussion
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082 or email NPSA_Superintendent@nps.gov.

Dated: June 4, 2002.

Charles Cranfield,

Superintendent, National Park of American Samoa.

[FR Doc. 02–17800 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commissions will be held on Wednesday, September 25, 2002, and Thursday, September 26, 2002, at the East Eddy's and Young's Motel in Tok, Alaska. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's of Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from February 19–20, 2002, meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Wrangell-St. Elias NP&P Staff Report.
10. Federal Subsistence Wildlife and Fisheries Management Report.
11. Public and Agency Comments.
12. Work Session (comment on issues, develop new recommendations, prepare letters).
13. Set time and place of next SRC meeting.

Adjournment

DATES: The meeting will begin at 9 a.m. on Wednesday September 25, 2002, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Thursday, September 26, 2002, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting will be held at the East Eddy's and Young's Motel Banquet Room in Tok, AK, telephone (907) 883–4412.

Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

FOR FURTHER INFORMATION CONTACT: Persons who want further information concerning the meeting may contact Superintendent Gary Candelaria or Devi Sharp, Chief of Natural Resources at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone (907) 822–5234 or (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Wrangell-St. Elias National Park, P.O. Box 439, Copper Center, Alaska 99573, telephone (907) 822–5234 or (907) 822–52345.

Robert L. Arnberger,

Regional Director, National Park Service, Alaska Region.

[FR Doc. 02–17830 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–955, 960 and 963 (Preliminary) (Remand)]

Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its preliminary antidumping investigations Nos. 731–TA–955, 960 and 963 (Preliminary).

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193 or Karen V. Driscoll, Office of General Counsel, telephone 202–205–3092, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*.)

SUPPLEMENTARY INFORMATION:

Reopening Record

In October 2001, the Commission made negligibility determinations in antidumping investigations regarding wire rod imports from Egypt, South Africa and Venezuela, and terminated those investigations pursuant to statute. The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On June 20, 2002, the CIT issued an opinion requiring the Commission to reconsider its terminations given the modified scope of investigations issued by the Department of Commerce (''Commerce'') on April 10, 2002 (67 FR 17,384). The Commission was given until August 2, 2002, or 43 days, in which to comply with the Court's remand order and issue remand determinations.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include in the record the modified scope issued by Commerce in April, 2002, and to obtain import data corresponding to that modified scope of investigations regarding subject wire rod imports from all sources. The record in

these proceedings will encompass the material from the record of the original preliminary investigations, information and import data submitted to and gathered by Commission staff during the remand proceedings, and Commerce's modified April 10, 2002 scope (67 FR 17,384).

Participation in the Proceedings

Due to the strict time constraints in this remand proceeding, and the limited nature of the remand, only those parties to the original administrative proceedings may participate in the Commission's remand proceedings. No additional filings with the Commission will be necessary for these parties to participate in these remand proceedings.

Nature of the Remand Proceedings

On July 12, 2002, the Commission will make available to parties who may participate in the remand proceedings, information that has been gathered by or submitted to the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before July 16, 2002 on whether any new information received affects the Commission's negligibility determinations in these investigations. These comments should not exceed ten double-spaced typewritten pages.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the above-referenced parties, as appropriate, under the administrative protective order (''APO'') in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17808 Filed 7–15–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–020]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: July 19, 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. 731–TA–955, 960, and 963 (Preliminary) (Remand) (Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before August 2, 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.

By order of the Commission:

Issued: July 12, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18046 Filed 7–12–02; 2:53 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement-Production of Seven Satellite/Internet Video Programs

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2003 for a cooperative agreement to fund the production of seven Satellite/Internet video programs. Four of the proposed programs are separate, individual, nationwide satellite/Internet teleconferences (three hours each). The other three are distance learning courses delivered via a satellite/Internet. One of the three distance learning programs are site coordinator/facilitator training sessions (Training for Trainers). A site coordinator precursor module will contain eight hours of satellite/internet training split over two days. The remaining two are content-driven training programs which will consist of 32 hours of training. We will have 16 hours of live-broadcast satellite/Internet training over four days, (four hours each day). The other 16 hours of off-air activities will be directed by our trained site coordinators. There will be a total of 52 hours of broadcast time FY 03.

DATES: Applications must be received by 4 p.m. on Thursday, August 15, 2002.

ADDRESSES: Applications should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service ot insure delivery by the due date as mail at NIC is still being delayed due to recent changes in mail handling procedures. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The security desk will call Fran Leonard at (202) 307–3106, and 0 for pickup. Faxed or emailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC web page at *www.nicic.org* (Click on ''cooperative agreements.'') Hard copies of the announcement can be obtained by calling Judy Evens at 1–800–995–6423 x44222 or email at *jevens@bop.gov.* Any specific questions regarding the

application process should be directed to Ms. Evens.

All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429 ext 131, or by *email:ewolahan@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background

Distance learning is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using the satellite broadcasting and the Internet to economically reach more correctional staff in federal, state and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field. The entire audience can be reached at the same time with exactly the same information. Everyone will be reading from the same page. In addition, NIC is creating training programs from its edited 32 hour programs that will be disseminated through its Information Center.

Purpose

The purposes of funding this initiative are:

(1) Produce four-three-hour satellite/Internet videoconferences, disseminating current information to the criminal justice community;

(2) Produce one eight-hour training sessions for site coordinators/facilitators. This is designed to train the facilitators from each registered site concerning the outcomes expected and in the knowledge and skills to facilitate the off-air activities;

(3) Produce two 16-hour sessions of distance learning training that responds directly to the needs identified by practitioners working in the criminal justice arena. The satellite training will be delivered four hours each day, Monday through Thursday.

Scope of Work

To address the scope of work for this project, the following will be needed:

1. *Producer Consultation and Creative Services:* The producer will: (a) Consult and collaborate on program design, program coordination, design of field segments and content development with NIC's Distance Learning Manager; (b) work with each individual consultant and develop their modules for delivery using the distance learning format and/or the teleconference format; (c) help develop scripts, graphic design, production elements and rehearsal for each module of the site coordinators' training and the distance learning training; (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the video- taping of testimonials at conferences.

2. *Pre-Production: Video:* The producer will supervise the production of vignettes to be used in each of the three-hour videoconferences, as well as the distance learning training. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Manager. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Manager.

Producer will supervise camera and audio crews to capture testimonials from leaders in the correctional field at designated correctional conferences. The producers will coordinate all planning of the production and post production for each of the seven teleconferences Video Production: Video production for each teleconference will consist of video taping content related events in the field, editing existing video and video taping experts for testimonial presentations. It will also include voice over, audio and music for each video, if necessary. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DV Pro Digital and/or Mini DVD.

Post Production (Studio): Innovated and thought provoking opening sequences will be produced for each teleconference. In addition graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, and set design and furniture for all teleconference segments. (Set design should change periodically throughout the award period). The producer will organize and supervise the complete production crew for rehearsal and production days. (*See* schedules below).

3. *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the following days and hours. A production crew will include Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Camera Operators (3 to 4), Teleprompter Operator, On Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personal (fax, email, and telephone.)

	Hours
1. Offender Job Retention for Correctional Professionals 32 Hour Distance Learning—October 7–11, 2002	
Rehearsal—October 6, 2002	8
Production On-Air, & Rehearsal—October 7, 2002	9
Production On-Air, & Rehearsal—October 8, 2002	9
Production On-Air, & Rehearsal—October 9, 2002	9
Production On-Air, & Rehearsal—October 10, 2002	5
2. Transition From Prison to the Community—February 19, 2003	
Rehearsal—February 18, 2003	8
Production On-Air, February 19, 2003	4
3. Site Coordinators/Facilitators Training for Youthful Offenders in Adult Corrections: A Systemic Approach Using Effective Interventions—May 14 & 15, 2003	
Rehearsal—May 13, 2003	8
Production On-Air—Rehearsal May 14, 2003	9
Production On-Air—May 15, 2003	5
4. The Criminal Justice Response to Children of Prisoners and Their Caretakers—June 18, 2003	
Rehearsal—June 17, 2003 7	8
Production On-Air, June 18, 2003	4
5. Institution Culture—July 16, 2003	
Rehearsal—July 15, 2003	8
Production On Air, July 16, 2003	4
6. Developing an Effective New Employee FTO Program—August 20, 2003	
Rehearsal—August 19, 2003	8
Production On-Air, August 20, 2003	4
7. Youthful Offender in Adult Corrections: A Systemic Approach Using Effective Interventions—32 Hour Distance Learning—September 15–19, 2003	
Rehearsal—September 14, 2003	8
Production On-Air & Rehearsal—September 15, 2003	9
Production On-Air & Rehearsal—September 16, 2003	9
Production On-Air & Rehearsal—September 17, 2003	9
Production On-Air, September 18, 2003	5

4. *Transmission:*

A. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;

B. Acquire downlink transponder time for KU-Band and C-Band

C. Purchase Internet streaming of 200 simultaneous feeds for each program.

5. *Equipment:* Applicants must have a minimum of the following equipment and qualified personnel.

A. Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people.

B. Four-Digital Studio Cameras (One of which could be an overhead camera with robotic control)

C. Chroma Key—At least one wall with chroma key capability along with the digital ultimate keying system

D. A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U-Matic 3/4 & SP.

E. A/B roll linear and digital nonlinear editing

F. Three-dimensional animation with computer graphics.

G. Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player

H. Ability to archive three to four videoconferences from FY02 and all seven of FY03

I. Computer Teleprompter for at least two studio cameras

J. Satellite Uplink and Transponder—KU-Band and C-Band/or Digital with KU-Band to cover the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States

K. Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (hand held and lapel), field monitors, audio mixers, and camera tripods.

6. Personnel:

A. Producer/Director.
B. Script Writer.
C. Set Designer.
D. Lighting Designer.
E. Audio Operator.
F. Graphics Operator.
G. Graphics Artist.
H. Floor Manager.
I. Studio Cameras Operators (3 to 4).
J. Tape Operator.
K. Location Camera Operator.
L. Teleprompter Operator.
M. Clerical/Administrative Support.
N. Makeup Artist.

Application Requirements

Applicants must submit an original (signed in blue ink) and five copies of their application and the required forms (see below.) Applicants must prepare a proposal that describes their plan to address the requirements to produce seven live Internet/Satellite teleconferences. The plan must include a list of all required equipment, identify their key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Supervisor. Please note that the Standard Form 424, Application for Federal Assistance, submitted with the proposal must contain the cover sheet, budget, budget narrative, assurances, certifications, and management plan. All required forms and instructions for their completion may be downloaded from the NIC website: http://www.nicic.org.

Authority: Public Law 93–415

Amount of Award

This is a cooperative agreement. A cooperative agreement is a form of assistance relationship through which the National Institute of Corrections is involved during the performance of the award. This award is made to an organization who has the capability to produce live satellite/Internet teleconferences. This initiative emphasizes television quality production that meets or exceeds major network quality. The award will be limited to $300,000 for both direct and indirect costs related to this project. Funds may not be used to purchase equipment, construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy.

All products from this funding will be in the public domain and available to interested agencies through the National institute of Corrections.

Availability of Funds: Funds are not presently available for this cooperative agreement. The Government's obligation under this cooperative agreement is contingent upon the availability of appropriated funds from which payment for cooperative agreement purposes can be made. No legal liability on the part of the government for any payment may arise until funds are made available for this cooperative agreement and until the awardee receives notice of such availability, to be confirmed in writing. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341.

Award Period: This award period is from October 1, 2002 to September 30, 2003.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member review panel.

Number of Awards: One (1).

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

NIC Application Number: 03A13: This number should appear as a reference line in your cover letter, in Box 11 of Standard Form 424, and on the outside of the package sent to NIC.

(Catalog of Federal Domestic Assistance Number: 16.601: Corrections—Staff Training and Development)

Dated: July 10, 2002.

Morris Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–17832 Filed 7–15–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 2, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or e-mail *Howzer-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days form the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor statistics (BLS).

Title: Current Population Survey (CPS) Basic Labor Force.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Frequency: Monthly.

Number of Respondents: 57,000.

Number of Annual Responses: 684,000.

Estimated Time Per Response: 7 minutes.

Total Burden Hours: 79,800.

Total Annualized Capital/startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing Services: $0.

Description: Section 2 of Title 29, Chapter 1, Subchapter 1, United States Code Annotated directs the Bureau of Labor statistics (BLS), under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Current Population Survey (CPS) has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey also helps to determine the employment situation of specific population groups as well as general trends in employment and unemployment.

Marlene J. Howze,

Acting DOL Clearance Officer.

[FR Doc. 02–17845 Filed 7–15–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, 1998; Supplemental Appropriation Act, 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Secretary's determination of the revised Program Year (PY) 2001 allotments for Dislocated Worker Activities.

SUMMARY: Public Law 107–20 Title II Chapter 7, the Supplemental Appropriation Act, 2001, rescinds $177.5 million from the dislocated worker program for PY 2001. The Act calls for a reduction of $110 million (8.6 percent of the amount previously appropriated) from the formula program and $67.5 million (21.2 percent of the amount previously appropriated) from the Secretary's national reserve account. The level of funding for the dislocated worker program is reduced to $1.413 billion due to the rescission. The Act requires the Secretary to implement the rescission based on each state's share of unexpended balances as of June 30, 2001. The procedures for implementing the rescission were provided in Training and Employment Guidance Letter (TEGL) 3–01, ''PY 2001 Changes in Dislocated Worker and Youth Funds,'' dated August 16, 2001. This guidance letter was amended September 28, 2001 (''Change 2''). TEGL 3–01 stated that the rescission would take effect after additional time for review and analysis of expenditure reports on the dislocated worker program. TEGL 26–01 provided states advance notice of the Secretary's planned determination for the revised PY 2001 allotments for dislocated worker activities.

EFFECTIVE DATE: This notice is effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Smith, Administrator, U.S. Department of Labor, Office of Adult Services, Employment and Training Administration, Room N–5426, 200 Constitution Avenue, NW., Washington, DC Telephone 202–693–3500; Fax (202) 693–3818.

SUPPLEMENTARY INFORMATION: TEGL 26–01, change 1 provided the states revised PY 2001 allotments for the dislocated worker program under Workforce Investment Act (WIA) Title I. The revised allotments are the result of the reduction of $110 million from the formula program. An additional $67.5 million is rescinded from the Secretary's national reserve account in PY 2001 as required by Public Law 107–20. The outlying areas, which are funded from the Secretary's dislocated worker program national reserve account, will have a reduction of $443,750 in available competitive funds for PY 2001.

The Secretary has made her determination as required by Public Law 107–20 (''Act''). The Act requires the Secretary to reduce the level of funding for states'' formula funds for dislocated worker program activities by $110 million and the Secretary's national reserve account by $67.5 million. The attached table shows the revised funding levels for each state as a result of the rescission.

WIA section 132(c) requires the Secretary to conduct reallotment of dislocated worker formula funds based on state financial reports submitted at the end of the program year. The procedures the Secretary uses for recapture and reallotment of funds are described in WIA regulations at 20 CFR 667.150. As stated in TEGLs 12–00 and 5–99, it was intended that the first reallotment of funds under WIA would be in PY 2001 based on obligations of PY 2000 funds. Due to the rescission, the Secretary has determined that reallotment will not apply in PY 2001 based on our review of the rescission language in Public Law 107–20 (Supplemental Appropriation Act, 2001).

Notice of Obligation (NOO) for each State's dislocated worker program was adjusted to reflect the reduction in the level of funding required by the rescission. The adjustment of funds covers NOOs for PY 2001 (July 1 to June 30) allotments.

Attachment A provides the results of the Secretary's determination in a chart showing PY 2001 Dislocated Worker Activities State Allotments and Attachment B shows the Dislocated Worker State Formula PY 2001 Rescission Methodology.

Attachments

Signed at Washington, DC July 9, 2002.

Shirley M. Smith,

Administrator, Office of Adult Services.

BILLING CODE 4510–30–P

Attachment A

U. S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
Impact of PY 2001 Rescission

State/Outlying Area	PY 2001 Initial Allotments	Rescission	PY 2001 Revised Allotments $	% Change
Total	**$1,590,040,000**	**($177,500,000)**	**$1,412,540,000**	**-11.2%**
Alabama	15,068,548	(519,868)	14,548,680	-3.5%
Alaska	11,395,001	(551,285)	10,843,716	-4.8%
Arizona *	12,879,316	(977,998)	11,901,318	-7.6%
Arkansas	7,103,656	(1,022,179)	6,081,477	-14.4%
California	273,391,437	(23,003,656)	250,387,781	-8.4%
Colorado	8,255,862	(764,987)	7,490,875	-9.3%
Connecticut	7,406,982	(436,861)	6,970,121	-5.9%
Delaware	2,184,617	(68,936)	2,115,681	-3.2%
District of Columbia	8,433,959	(556,773)	7,877,186	-6.6%
Florida	39,311,417	(2,749,836)	36,561,581	-7.0%
Georgia	20,930,127	(1,933,764)	18,996,363	-9.2%
Hawaii	6,477,632	(1,229,909)	5,247,723	-19.0%
Idaho	3,898,217	(256,101)	3,642,116	-6.6%
Illinois	41,575,303	(2,183,309)	39,391,994	-5.3%
Indiana	10,682,428	(640,174)	10,042,254	-6.0%
Iowa	5,437,368	(302,246)	5,135,122	-5.6%
Kansas	5,502,565	(473,377)	5,029,188	-8.6%
Kentucky	11,735,435	(1,574,438)	10,160,997	-13.4%
Louisiana	23,158,418	(2,506,863)	20,651,555	-10.8%
Maine	3,214,945	(179,397)	3,035,548	-5.6%
Maryland	17,559,765	(1,377,309)	16,182,456	-7.8%
Massachusetts	15,134,353	(463,739)	14,670,614	-3.1%
Michigan	21,932,071	(773,029)	21,159,042	-3.5%
Minnesota	10,473,235	(346,103)	10,127,132	-3.3%
Mississippi	30,701,477	(1,443,863)	29,257,614	-4.7%
Missouri	12,374,521	(1,224,459)	11,150,062	-9.9%
Montana	7,084,638	(208,655)	6,875,983	-2.9%
Nebraska	2,997,707	(142,384)	2,855,323	-4.7%
Nevada	5,334,057	(409,307)	4,924,750	-7.7%
New Hampshire	1,877,882	(112,782)	1,765,100	-6.0%
New Jersey	30,498,439	(2,508,993)	27,989,446	-8.2%
New Mexico *	21,923,521	(1,813,649)	20,109,872	-8.3%
New York	105,559,534	(17,204,630)	88,354,904	-16.3%
North Carolina	16,959,265	(1,459,422)	15,499,843	-8.6%
North Dakota	1,279,725	(89,448)	1,190,277	-7.0%
Ohio	34,309,127	(2,900,698)	31,408,429	-8.5%
Oklahoma	6,561,865	(716,469)	5,845,396	-10.9%
Oregon	28,811,913	(1,449,099)	27,362,814	-5.0%
Pennsylvania	38,706,830	(3,666,625)	35,040,205	-9.5%
Puerto Rico	166,101,676	(16,523,469)	149,578,207	-9.9%
Rhode Island	2,885,714	(132,818)	2,752,896	-4.6%
South Carolina	11,936,257	(888,239)	11,048,018	-7.4%
South Dakota	1,283,809	(45,705)	1,238,104	-3.6%
Tennessee	12,771,543	(965,444)	11,806,099	-7.6%
Texas	63,747,179	(5,366,658)	58,380,521	-8.4%
Utah	4,430,131	(167,492)	4,262,639	-3.8%
Vermont	1,240,882	(18,345)	1,222,537	-1.5%
Virginia	12,424,713	(989,291)	11,435,422	-8.0%
Washington	27,119,437	(1,850,523)	25,268,914	-6.8%
West Virginia	25,423,973	(2,309,570)	23,114,403	-9.1%
Wisconsin	12,880,353	(387,017)	12,493,336	-3.0%
Wyoming	1,663,175	(112,809)	1,550,366	-6.8%
State Total	**1,272,032,000**	**(110,000,000)**	**1,162,032,000**	**-8.6%**
American Samoa	188,651	0	188,651	0.0%
Guam	742,196	0	742,196	0.0%
Marshall Islands	400,690	0	400,690	0.0%
Micronesia	703,169	0	703,169	0.0%
Northern Marianas	333,969	0	333,969	0.0%
Palau	125,530	0	125,530	0.0%
Virgin Islands	994,210	0	994,210	0.0%
Outlying Area Competitive	486,685	(443,750)	42,935	-91.2%
Outlying Area Total	**3,975,100**	**(443,750)**	**3,531,350**	**-11.2%**
National Reserve	**314,032,900**	**(67,056,250)**	**246,976,650**	**-21.4%**

** For Arizona and New Mexico, rescission amounts include amounts attributable to state share of funds transferred to Navajo Nation in accordance with WIA Sec 166(g)(6).*

Attachment B

U. S. Department of Labor
Employment and Training Administration

Dislocated Worker Program State Formula
Program Year 2001 Rescission Calculations

- **Description:** **Based on State (including Navajo Nation) share of Dislocated Worker unexpended balances as of 6/30/01**
  = 6/30/01 availability (reflecting transfers) less 6/30/01 cumulative expended
  = Years: PY 1999, PY 2000, and FY 2001
  = Sum of Estimated Dislocated Worker portion of Statewide Activities
  Rapid Response Activities
  Estimated Dislocated Worker portion of Local Administration
  Local Dislocated Worker Program

- **Source:** State Workforce Investment Act 6/30/01 reports for Statewide Activities, Rapid Response Activities, Local Administration, Local Youth Program, Local Adult Program, Local Dislocated Worker Program (plus Navajo Nation reports for Dislocated Worker program)

- **Methodology for Disaggregating Statewide/Local Admin Report Data by Program:**

		Statewide Activities	Local Adminstration
Auth	PY 1999	Prorated using State Allotment by pgm	Prorated using rptd Local Pgm Auth by pgm or State allotment by pgm, if no Local Pgm reported
	PY 2000/FY 2001	Fed NOO $ to State by pgm less est Local Admin Auth by pgm less rptd Local Pgm Auth by pgm less rptd Rapid Response Auth (DW only)	Prorated using rptd Local Pgm Auth by pgm or Fed NOO by pgm, if no Local Pgm reported
Expend	All Years	Prorated using Statewide Auth est by pgm	Prorated using Local Adm Auth est by pgm
Unexpend	All Years	Auth less Expend by Pgm	Auth less Expend by Pgm

- **Rescission Calculations:**

(1) **Unexpended balances as of 6/30/01 for Dislocated Worker program are calculated: 6/30/01 total availability (reflecting transfers) less 6/30/01 cumulative expenditures.**
(2) **Navajo Nation expended balances are prorated to Arizona and New Mexico based on each state's share of funds transferred to the Navajo Nation for PY 2000 and FY 2001. Each state's resulting share of the Navajo Nation's unexpended funds are added to the state's unexpended balance.**
(3) **$110 million rescission amount prorated on State share of Dislocated Worker unexpended balances as of 6/30/01.**

[FR Doc. 02–17846 Filed 7–15–02; 8:45 am]
BILLING CODE 4510–30–C

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–6 DD 99–01]

Ascertainment of Controversy for the Distribution of the 1999, 2000 and 2001 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected in 1999, 2000 and 2001 for the distribution of digital audio recording devices and media to submit comments as to whether a controversy exists as to the distribution of the royalty fees in the 1999, 2000 and 2001 Musical Works Funds.

DATES: Comments and Notices of Intention to Participate are due September 16, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act of 1992 (the ''Act''), Public Law 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties, provided that the copyright owners file a claim with the Copyright Office each year during January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66⅔% of the royalties and the Musical Works Fund receives the remaining 33⅓%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The two subfunds created for the benefit of nonfeatured artists receive a total of 4% of the funds allocated to the Sound Recordings Fund. Of the remaining royalty fees in the Sound Recordings Fund, 60% is allocated to the Copyright Owners Subfund and 40% is allocated to the Featured Recording Artists Subfund. Similarly, the royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Distribution of these fees may occur in one of two ways. If the claimants within each subfund agree among themselves how to distribute the royalty fees, the Librarian of Congress distributes the royalties to the claimants in accordance with their negotiated agreement.[1] 17 U.S.C. 1007(b). Alternatively, if the parties cannot reach an agreement, the Librarian of Congress must convene a copyright arbitration royalty panel (''CARP'') to determine the distribution of royalty payments.[2] 17 U.S.C. 1007(c). Before commencing a distribution proceeding, however, the Copyright Office must first ascertain whether and to what extent a controversy exists concerning the distribution of the royalty fees among the copyright claimants to the funds available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intention To Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have timely filed a claim to either of the two subfunds comprising each of the 1999, 2000, and 2001 Musical Works Funds.[3] Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a Notice of Intention to participate. The notice must identify each year and each subfund in which the copyright owner has an interest. Failure to file a timely Notice

[1] Each year, the claimants to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves as to the proportionate share that each claimant receives from the subfunds. These agreements have made it unnecessary for the Librarian to convene a CARP and have allowed him to distribute all royalty fees allocated to the Sound Recordings Funds, including those fees allocated to the 1999, 2000 and 2001 Sound Recordings Funds. *See* Orders, Docket No. 2000–5 DD 99 (June 2, 2000); Docket No. 2001–4 CARP DD 2000 ((May 21, 2001); and Docket No. 2002–6 CARP DD 2001 (July 10, 2002).

[2] There have been two CARP proceedings to determine the final distribution of the royalty fees in the Musical Works Funds. In 1996, the Librarian convened a CARP to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds, and in 1998, the Librarian convened a second CARP to determine the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds. *See* 62 FR 6558 (February 12, 1997) and 66 FR 9360 (February 7, 2001), respectively.

[3] Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM–458, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20557–6400.

of Intention may preclude a party from participating in the distribution proceeding. These notices are due September 16, 2002.

III. Motion of Phase I Claimants for Partial Distribution

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 1007(c) of the Copyright Act, title 17 of the United States Code. Pursuant to this provision, the American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; The Harry Fox Agency, Inc.; and The Songwriters Guild of America (collectively, the ''Settling Parties'') submitted a motion to the Copyright Office on June 13, 2002, for a partial distribution of 95% of the Digital Audio Recording Funds Writers and Publishers Subfunds of 1999, 2000, and 2001 Musical Works royalty funds. The Motion states that the Settling Parties have reached a confidential settlement concerning their respective shares for the 1999, 2000 and 2001 Musical Works Funds.

A claimant who is not a party to the Settling Parties' Motion, but who files a Notice of Intention to Participate, may file a response to the motion no later than the due date set forth in this notice for comments on the existence of controversies and the Notices of Intention to Participate. The Motion of the Settling Parties for Partial Distribution of the 1999, 2000 and 2001 Musical Works Funds is available for inspection and copying in the Office of the General Counsel. The Office will consider the merits of this motion once all interested parties have been identified by the Notices of Intention requested herein and have had an opportunity to file responses to the motion.

IV. Consolidation of Proceedings

The Copyright Office is consolidating the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds into a single proceeding in order to address the merits of the Settling Parties' motion for a partial distribution of funds from the 1999, 2000 and 2001 Musical Works Funds. The Copyright Office has routinely consolidated the consideration of the distribution of the Musical Works Funds for several years into a single proceeding where, as here, the issues regarding the distribution of the royalty fees are the same for each year. The Copyright Office continues this practice because consolidation of the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds provides a cost savings to the parties and to the Copyright Office and because it promotes administrative efficiencies.

Dated: July 11, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–17897 Filed 7–15–02; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–088]

NASA Advisory Council, Space Science Advisory Committee Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Thursday, August 8, 2002, 8:30 a.m. to 5:30 p.m., and Friday, August 9, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Update on Astronomy and Physics Division Activities
— Report from SEU Working Groups
— Report on Ultra Long Duration Balloon Program
— Report on NASA Long Range Planning
— Discussion of Roadmap

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 10, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–17844 Filed 7–15–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 15, 22, 29, August 5, 12, 19, 2002.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 15, 2002

There are no meetings scheduled for the Week of July 15, 2002.

Week of July 22, 2002—Tentative

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m.—Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9 a.m. Briefing of NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD), (Public Meeting), (Contact: John Zabko, 301–415–2308).

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 4–0 on July 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues (Closed—Ex. 9)'' be held on July 10, and on less than one week's notice to the public.

By a vote of 4–0 on July 8 and 9, 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 July 11, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

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, DC 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: July 11, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–17971 Filed 7–12–02; 11:29 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated July 7, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 18, 2002 and continuing through July 7, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 24, 2002, and for economic injury the deadline is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17889 Filed 7–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423]

State of Minnesota; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated July 9, 2002, the above-numbered Declaration is hereby amended to include Beltrami, Clay, Itasca, McLeod, Pennington, Polk, and Wright Counties in the State of Minnesota as disaster areas due to damages caused by severe storms, flooding and tornadoes beginning on June 9, 2002 and continuing through June 28, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Aitkin, Anoka, Carver, Cass, Hennepin, Meeker, Renville, Sherburne, Sibley, Stearns, and Wilkin Counties in Minnesota; and Richland County in North Dakota. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 13, 2002 and for economic injury the deadline is March 14, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17888 Filed 7–15–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: August 20, 2002, 10 a.m.–6 p.m., August 21, 2002, 10 a.m.–5 p.m., August 22, 2002, 9 a.m.–1 p.m.

ADDRESSES: Ritz-Carlton Hotel (Pentagon City), 1250 South Hayes Street, Arlington, VA 22202, Phone: (703) 415–5000.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The focus of this meeting will be on Employment Networks and the provision of employment services under the Ticket to Work and Self -Sufficiency Program.

The Panel will meet in person commencing on Tuesday, August 20, 2002 from 10 a.m. to 6 p.m.; Wednesday, August 21, 2002 from 10 a.m. to 5 p.m.; and Thursday, August 22, 2002 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Tuesday, Wednesday and Thursday, August 20, 21, and 22, 2002. Public testimony will be heard in person Tuesday, August 20, 2002 from 3:50 p.m. to 4:20 p.m. and on Thursday, August 22, 2002 from 9 a.m. to 9:30 a.m. The Panel is particularly interested in hearing public comment from Employment Networks or regarding the provision of employment services under the Ticket to Work Program. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time

to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024
- Telephone contact with Kristen Breland at (202) 358–6423
- Fax at (202) 358–6440
- E-mail to *TWWIIAPanel@ssa.gov*

Dated: July 8, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–17753 Filed 7–15–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2002–12499]

National and State Surveys of Alcohol Targets of Opportunity

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) has a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. A core priority of NHTSA is to reduce the number of alcohol-related fatalities. Since 1999, several states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with enhanced publicity. These states were selected because of their potential for reducing the substantial number or percentage of alcohol-related fatalities occurring each year within their state. During the next few years NHTSA will be supporting additional state programmatic efforts to reduce the number of alcohol-related crashes. One means of determining whether these programs are successful is to conduct periodic telephone surveys of the public both prior to and after program implementation to assess changes in drivers' attitudes and behavior regarding drinking and driving after drinking. It would also be anticipated that states implementing such programs should show larger and more positive changes in attitudes and behavior as compared to a national sample of drivers. Under procedures established by the Paperwork Reduction Act of 1995, NHTSA invites the general public and Federal Agencies to comment on the need for the proposed data collection, the types of questions respondents should be asked, ways to enhance the quality of the collection, and ways to minimize the burden on respondents.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Direct all written comments to US DOT, Docket Management Facility, Docket Operations, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, Docket Number NHTSA–2002–12499. It is requested but not required that 2 copies of the comment be provided. The Docket section is open weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, e-mail *mlevy@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and otherwise consult with affected agencies and members of the public concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following collection of information:

National and State Surveys of Alcohol Targets of Opportunity

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: June 30, 2005.

Summary of the Collection of Information

The National Highway Traffic Safety Administration (NHTSA) has a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. A core priority of NHTSA is to reduce the number of alcohol-related fatalities. In support of this priority, since 1999, several states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number or percentage of alcohol-related fatalities occurring each year within their state. One means of determining whether these state programs were successful was to employ periodic telephone surveys of the public both prior to and after program implementation to assess changes in drivers' attitudes and behavior regarding drinking and driving after drinking. [OMB No.2127–0605]

During the next few years NHTSA will be supporting additional state programmatic efforts to reduce the number of alcohol-related crashes. The objective of the current survey is to determine the extent to which target of opportunity programs impact the awareness, attitudes, and driving behavior of motorists. It is anticipated that changes in enforcement levels should be reflected by changes in driver awareness, attitudes and behavior. For example, a state that substantially increases their alcohol-enforcement activities and provides substantial publicity might expect that respondents report a greater degree of awareness of these efforts as compared to before the program began. It may be expected that respondents would report they came in contact with law enforcement more frequently and drive after drinking less often once the program began. In addition, the survey will provide information on driver awareness of specific enforcement techniques being used as well as data regarding ongoing alcohol media campaign(s). It also would be anticipated that states implementing such programs should show larger and more positive changes in attitudes and behavior as compared to a national sample of drivers. The information to be collected by this survey is not available to NHTSA through any other source.

Within each state, the survey will be administered in several waves (e.g., prior to the intervention effort, at the mid-point, and at the end the effort) by telephone to a probability sample of the driving age public (aged 16 years or older as of their last birthday). The national survey also will target the driving age public and will be conducted twice yearly for three years. Participation by respondents is strictly voluntary. The interview is anticipated to average 5 minutes in length. Interviewers will use computer-assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names and telephone numbers used to reach the respondents are separated from the data records prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

In 2000, there were 16,792 alcohol-related traffic fatalities. This number represents approximately 40 percent of all traffic fatalities. Also, an estimated 310,000 persons were injured in crashes where police reported that alcohol was present—an average of one person injured approximately every two minutes. (Traffic Safety Facts: 2000, NHTSA-National Center for Statistics and Analysis). A recent NHTSA sponsored publication ''The Economic Impact of Motor Vehicle Crashes,'' reported that in 2000 alcohol related crashes was associated with more than 50 billion dollars in economic costs.

NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. In 1999, NHTSA awarded cooperative agreements valued at approximately $1,000,000 each to five states—Pennsylvania, Georgia, Louisiana, Tennessee, and Texas. During the next few years, NHTSA will be supporting countermeasure efforts to reduce these types of crashes in additional states. Each of these states will be responsible for implementing an enforcement and publicity program. Data to be collected include number and type of police stops made, and changes in alcohol-related violations and crashes.

In order to reduce the work requirements for each state and to create sets of survey data that may be compared among the states, one or more separate awards will be made to survey firms having expertise in conducting random telephone surveys. Thus, the survey data to be collected comprise only one part of the entire data set that will be assessed.

The entire data set will be used to properly plan and evaluate new enforcement programs directed at reducing the occurrence of alcohol-impaired driving. States found to have implemented effective programs to reduce the driving after drinking problem shall prepare materials that highlight the major features of their programs. These materials will be disseminated among states that want to implement an improved alcohol-enforcement program.

The findings from this proposed data collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide data in support of states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

It should be noted that during the past decade NHTSA has conducted surveys on drinking and driving attitudes and behavior. Most of these were obtained biannually from nationally represented samples and most of these were conducted years ago and cannot be used within the context of the present study. Some of the survey data were collected within the past year but these data will not be contemporaneous will future state surveys dealing with enforcement and publicity activities.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 5 minutes in length would be administered to each of 500 randomly selected members of the general public age 16 and older, nationally and for each state supported by this study. The national survey will be conducted six times over the three-year data collection period for a total of 3,000 respondents. State surveys will also be conducted over a three-year period. It is anticipated that three waves will be conducted in each state for a total of 1500 respondents per state and up to 50 states will be surveyed for a total of 75,000 respondents. Interview will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Businesses are ineligible for the sample and would be not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each state for review.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 5 minutes to complete the telephone interview. Thus, the number of estimated reporting burden on the general public would be a total of 6500 hours for the national and state surveys or 2166.7 hours per year. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 02–17887 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12173]

RIN 2127–AF53

Odometer Disclosure Requirements; Disclosure of Odometer Information; Review: The Incidence Rate of Odometer Fraud; Preliminary Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report that is a nationwide assessment of odometer fraud. The report's title is *Preliminary Report: The Incidence Rate of Odometer Fraud.*

DATES: Comments must be received no later than November 13, 2002.

ADDRESSES:

Report: You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/80944.html.* The full report is available on the Internet in PDF format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809441.pdf.*

Comments: All comments should refer to the Docket number of this notice (NHTSA– 2002–12173). You may submit your comments in writing to: U.S. Department of Trnsportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Docket Management Systm Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Car Safety'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

SUPPLEMENTARY INFORMATION: The technical report estimates the probability of an odometer rollback during the first 11 years of a passenger vehicle's life to the extent it can be detected in title transfer and other odometer reading data. The analyses uses a nationally representative sample of 10,000 passenger cars, pickup trucks, vans and sport utility vehicles and a national vehicle history database to identify vehicles with odometer discrepancies that suggest rollback—*i.e.,* odometer readings on two separate occasions, and the later reading has the lower mileage. The rate of odometer fraud over the life of the vehicle is 3.47 percent (confidence bounds from 2.68 to 4.26 percent). That is a 3.47 percent chance that a vehicle would have its odometer rolled back at any point during the first 11 years of its life. There are approximately 452,000 cases of odometer fraud per year in the United States. This study also estimates the difference between the inflated prices that consumers actually paid for the rolled-back vehicles and the prices they would have been willing to pay if they had known the true mileage. Those costs average $2,336 per case of odometer fraud. Given 452,000 cases per year in the United States, that amounts to $1,056 million per year (confidence bounds from $737 million to $1,376 million).

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of this preliminary report and invites reviewers to submit comments about the data, the statistical methods used in the analyses, and/or additional information. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement the report. If the comments warrant a significant revision, then NHTSA will either add an appendix to the report or publish a revised report; otherwise, this preliminary report will serve as the final report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002–12173) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If your submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions.

We also request, but do not require you to send a copy to Christina Morgan, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *tmorgan@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelop containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management

receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

Your may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

Your may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms./dot.gov*).

2. On the page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on ''search.''

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8

Dated: July 11, 2002.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 02–17891 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 7⅞ Percent Treasury Bonds of 2002–07, Washington, DC

1. Public notice is hereby given that all outstanding 7⅞ percent Treasury Bonds of 2002–07 (CUSIP No. 912810 BZ O) dated November 15, 1977, due November 15, 2007, are hereby called for redemption at par on November 15, 2002, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's website, http://www.publicdebt.treas.gov.

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in *Treasury-Direct* accounts, will be made automatically on November 15, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–17616 Filed 7–15–02; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain

Bahrain

Iraq

Kuwait

Lebanon

Libya

Oman

Qatar

Saudi Arabia

Syria

United Arab Emirates

Yemen, Republic of

Dated: June 28, 2002.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 02–17762 Filed 7–15–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automotive Products Trade Act of 1965

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automotive Products Trade Act of 1965.

OMB Number: 1515–0178.

Form Number: N/A.

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 12,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 23,587.

Estimated Total Annualized Cost on the Public: $46,500.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17778 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Prior Disclosure Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1515–0212.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Annualized Cost to the Public: N/A.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17779 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Disclosure of Information on Inward and Outward Vessel Manifest

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Disclosure of Information on Inward and Outward Vessel Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Printing and Records Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Disclosure of Information on Inward and Outward Vessel Manifest.

OMB Number: 1515–0124.

Form Number: N/A.

Abstract: This information is used to grant a domestic importer's, consingee's, and exporter's request for confidentially of its identity from public disclosure.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 578.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 289.

Estimated Total Annualized Cost on the Public: $1,400.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17792 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Foreign Trade Zone Annual Reconciliation Certification and recordkeeping Requirement

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1515–0151.

Form Number: N/A.

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statue and regulations. The operator will furnish Customs an annual certification of their compliance.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 260.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 195.

Estimated Total Annualized Cost on the Public: $1,025.50.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17793 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2–C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1515–0175.

Form Number: N/A.

Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. Customs' also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,490.

Estimated Total Annualized Cost on the Public: $49,800.

Dated: July 1, 2002.

Tracey Denning,

Team Leader, Information Services Branch.

[FR Doc. 02–17794 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry Summary and Continuation Sheet

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet.

OMB Number: 1515–0065.

Form Number: Customs Form 7501, 7501A.

Abstract: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondent: 38,193.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 20,010,000.

Estimated Annualized Cost to the Public: $153,295,000.

Dated: June 21, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–17798 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Immediate Delivery Application

AGENCY: U.S. Customs, Department of the Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or beforeSeptember 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting

comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1515–0069.

Form Number: Customs Form 3461 and 3461 Alternate.

Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,100.

Estimated Time Per Respondent: 15.5 minutes.

Estimated Total Annual Burden Hours: 949,500.

Estimated Annualized Cost to the Public: $15,658,500.

Dated: June 27, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17799 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Crew's Effects Declaration

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1515–0061.

Form Number: Customs Form 1304.

Abstract: Customs Form 1304 contains a list of Crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as Crew's effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 206,100.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: $188,150.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17827 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to Form 8810 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 37 hr., 29 min.

Estimated Total Annual Burden Hours: 3,749,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17862 Filed 7–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its second meeting on July 29–31, 2002 at the Wyndham Hotel, 1400 M Street NW., Washington, DC 20005. The meeting will begin on Monday, July 29 at 1 p.m. and end on Wednesday, July 31 at 11 a.m.

Established under the ''Department of Veterans Affairs Program Enhancements Act of 2001'', the Commission is to consider legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA; and to evaluate the future of the nursing profession in VA. The Commission will convene to lay the groundwork for accomplishing its charge and to develop a comprehensive plan for collecting, analyzing, and disseminating data/information. The Commission is chaired by Marilyn M. Pattillo, Ph.D., R.N., C.S., N.P.

The Commission is required, not later than two years from May 8, 2002, to submit to Congress and the Secretary of Veterans Affairs a report on its findings and recommendations.

Members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: July 10, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–17912 Filed 7–15–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 136

Tuesday, July 16, 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.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–08; Introduction

Correction

In rule document 02–15939 beginning on page 43512 in the issue of Thursday, June 27, 2002, make the following correction:

On page 43512, in the third column, under **Federal Acquisition Circular**, in the last line, ''July 24, 2002'' should read ''July 29, 2002''.

[FR Doc. C2–15939 Filed 7–15–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 16, 2002

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–2137–03; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to Navy operation of the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar. Issuance of regulations, and Letters of Authorization under these regulations, governing unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's operation of SURTASS LFA sonar as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from August 15, 2002 through August 15, 2007.

ADDRESSES: A copy of the Navy application and a list of references used in this document may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, documents and the public hearing record are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On August 12, 1999, NMFS received an application from the U.S. Navy requesting a small take exemption under section 101(a)(5)(A) of the MMPA for the taking of marine mammals incidental to deploying the SURTASS LFA sonar system for training, testing and routine military operations anywhere within the world's oceans (except for Arctic and Antarctic waters) for a period of time not to exceed 5 years. According to the original Navy application, SURTASS LFA sonar would operate a maximum of 4 ship systems in the 10 geographic operating regions in which SURTASS LFA sonar could potentially operate. There would be a maximum of four SURTASS LFA sonar systems with an expected maximum of two systems at sea at any one time.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Low-frequency (LF) sound travels in seawater more effectively and for greater distances than higher frequency sound used by most other active sonars. According to the Navy, the SURTASS LFA sonar system would meet the Navy's need for improved detection and tracking of new-generation submarines at a longer range. This would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range.

Description of the Activity

The SURTASS LFA sonar system is a long-range, LF sonar (between 100 and 500 Hertz) that has both active and passive components. It does not rely on detection of noise generated by the target. The active component of the system is a set of up to 18 LF acoustic transmitting source elements (called projectors) suspended from a cable from underneath a ship. The projectors are devices that transform electrical energy to mechanical energy by setting up vibrations, or pressure disturbances with the water to produce the pulse or ping. The SURTASS LFA sonar acoustic transmission is an omnidirectional (full 360 degrees) beam in the horizontal. The expected water depth of the center of the array is 400 ft (122 m), with a narrow vertical beamwidth that can be steered above or below the horizontal. The source level (SL) of an individual projector in the SURTASS LFA sonar array is approximately 215 dB, and because of the physics involved in beam forming and transmission loss processes, the array can never have a sound pressure level (SPL) higher than the SPL of an individual projector. The expected minimum water depth at which the SURTASS LFA vessel will operate is 200 m (656.2 ft). Normally, the shallowest depth that it can operate is 100 m (328.1 ft).

The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions is referred to by the Navy as a ''ping'' and can last as short as 6 seconds (sec) to as long as 100 sec, normally with no more than 10 seconds at any single frequency. The time

between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound ''on'' time to total time) can be controlled but cannot be greater than 20 percent; typical duty cycle is between 10 and 15 percent.

The passive or listening component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones are mounted on a horizontal array that is towed behind the ship. The SURTASS LFA sonar ship maintains a minimum speed of 3.0 knots (5.6 km/hr; 3.4 mi/hr) in order to keep the array deployed.

The Navy anticipates that a normal SURTASS LFA sonar deployment schedule for a single vessel would involve about 270 days/year at sea (underway). A normal at-sea mission would occur over a 30-day period, made up of two 9-day exercise segments. The remaining 12 days of the at-sea mission would be spent in transit or repositioning the vessel. In an average year there could be a maximum of 9 missions, six of which would involve the employment of SURTASS LFA sonar in the active mode and three of which would employ the SURTASS LFA sonar in the passive mode only. Active sonar operations could be conducted up to 20 hrs during an exercise day, although the system would actually be transmitting for only a maximum of 4 hrs/day (resulting in 432 hrs of active transmission time per year for each SURTASS LFA sonar system in operation based on a maximum duty cycle of 20 percent). Between missions, an estimated 95 days would be spent in port for upkeep and repair.

At present, only one SURTASS LFA sonar system is available for deployment. A second SURTASS LFA sonar system is expected to be available shortly. Delivery of the third and fourth systems have been postponed until after FY 2007. As a result, under the 5-year window of these regulations, NMFS is authorizing marine mammal harassment takings for only 2 SURTASS LFA sonar systems, on average with one vessel operating in the Pacific-Indian Ocean area and one vessel in the Atlantic Ocean-Mediterranean Sea area. With two vessels, there would normally be 6 SURTASS LFA sonar missions in each of these oceanic basins (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/ year), or a total of 12 active sonar missions per year over the 5-year period of the regulations.

Description of Acoustic Propagation

The following is a very basic and generic description of the propagation of LFA sonar signals in the ocean and is provided to facilitate understanding of this action. However, because the actual physics governing the propagation of SURTASS LFA sound signals is extremely complex and dependent on numerous in-situ environmental factors, the following is for illustrative purposes only.

In actual SURTASS LFA sonar operations, the crew of the SURTASS LFA sonar platform will measure oceanic conditions (such as sea water temperature and salinity versus depth) prior to and during transmissions and at least every 12 hours, but more frequently when meteorological or oceanographic conditions change. These technicians will then use U.S. Navy sonar propagation models to predict and/or update sound propagation characteristics. According to the Navy, these extremely sophisticated computer simulations are among the most accurate in the world. The short time periods between actual environmental observations and the subsequent model runs further enhance the accuracy of these predictions. Fundamentally these models are used to determine what path the LF signal will take as it travels through the ocean and how strong the sound signal will be at given range along a particular transmission path.

Accurately determining the speed at which sound travels through the water is critical to predicting the path that sound will take. The speed of sound in seawater varies directly with depth, temperature, and salinity. Thus, an increase in depth or temperature or, to a lesser degree, salinity will increase the speed of sound in seawater. However, the oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics which determine the sound speed change with depth (in the case of temperature and salinity), season, geographic location, and locally, with time of day. After accurately measuring these factors, mathematical formulas or models can be used to generate a plot of sound speed versus water depth. This type of plot is generally referred to as a sound speed profile (SSP). Near the surface, ocean water mixing results in a fairly constant temperature and salinity. In this mixed layer, depth (pressure) dominates the SSP and sound speed *increases* with depth. Below the mixed layer, sea temperature drops rapidly in an area referred to as the thermocline. In this region, temperature dominates the SSP and speed *decreases* with depth. Finally, beneath the thermocline, the temperature becomes fairly uniform and increasing pressure causes the SSP to *increase* with depth.

One way to envision sound traveling though the sea is to think of the sound as ''rays.'' As these rays travel though the sea, their direction of travel changes as a result of speed changes, bending or refracting toward areas of lower speed and away from areas of higher speed. Depending on environmental conditions, refraction can either be toward or away from the surface. Additionally, the rays can be reflected or absorbed when they encounter the surface or the bottom. Under the correct environmental conditions, sound rays can repeatedly be refracted upward and downward and thus become trapped in a duct or ''sound channel.'' Similarly, reflections from the surface or the bottom can combine with refraction to create a duct. In the right circumstances, repeated refraction can result in long-range focusing and defocusing of the sound. Because of the possibility of multiple transmission paths, all of which are dependent on environmental conditions, accurate predictions of how sound travels in water is an extremely complex process.

Some of the more prevalent acoustic propagation paths in the ocean include: acoustic ducting; convergence zone (CZ); bottom interaction; and shallow-water propagation.

Acoustic Ducting

There are two types of acoustic ducting: surface ducts and sound channels.

Surface Ducts

As previously discussed, the top layer of the ocean is normally well mixed and has relatively constant temperature and salinity. Because of the effect of depth (pressure), surface layers exhibit a slightly positive sound speed gradient (that is, sound speed increases with depth). Thus, sound transmitted within this layer is refracted upward toward the surface. If sufficient energy is subsequently reflected downward from the surface, the sound can become ''trapped'' by a series of repeated upward refractions and downward reflections. Under these conditions, a surface duct, or surface channel is said to exist. Sound trapped in a surface duct can travel for relatively long distances with its maximum range of propagation dependent on the specifics of the SSP, the frequency of the sound, and the reflective characteristics of the surface. As a general rule, surface duct

propagation will improve as the temperature uniformity and depth of the layer increase. For example, transmission is improved when cloudy, windy conditions create a well-mixed surface layer or in high-latitude midwinter conditions where the mixed layer extends to several hundred feet deep.

Sound Channels

Variation of sound speed, or velocity, with depth causes sound to travel in curved paths. A sound channel is a region in the water column where sound speed first decreases with depth to a minimum value, and then increases. Above the depth of minimum value, sound is refracted (bent) downward; below the depth of minimum value, sound is refracted upward. Thus, much of the sound starting in the channel is trapped, and any sound entering the channel from outside its boundaries is also trapped. This mode of propagation is called sound channel propagation. This propagation mode experiences the least transmission loss along the path, thus resulting in long-range transmission.

At low and middle latitudes, the deep sound channel axis varies from 1,970 to 3,940 ft (600 to 1,200 m) below the surface. It is deepest in the subtropics and comes to the surface in the high latitudes, where sound propagates in the surface layer. Because propagating sound waves do not interact with either the sea surface or seafloor, sound propagation in sound channels do not attenuate as rapidly as bottom- or surface-interacting paths. The most common sound channels used by SURTASS LFA sonar are convergence zones (CZs).

Convergence Zones

CZs are special cases of the sound-channel effect. When the surface layer is narrow or when sound rays are refracted downward, regions are created at or near the ocean surface where sound rays are focused, resulting in concentrated levels of high sounds. The existence of CZs depends on the SSP and the depth of the water. Due to downward refraction at shorter ranges, sound rays leaving the near-surface region are refracted back to the surface because of the positive sound speed gradient produced by the greater pressure at deep ocean depths. These deep-refracted rays often become concentrated at or near the surface at some distance from the sound source through the combined effects of downward and upward refraction, thus causing a CZ. CZs may exist whenever the sound speed at the ocean bottom, or at a specific depth, exceeds the sound speed at the source depth. Depth excess, also called sound speed excess, is the difference between the bottom depth and the limiting, or critical depth.

CZs vary in range from approximately 18 to 36 nm (33 to 67 km), depending upon the SSP. The width of the CZ is a result of complex interrelationships and cannot be correlated with any specific factor. In practice, however, the width of the CZ is usually on the order of 5 to 10 percent of the range (see Figure 1). For optimum tactical performance, CZ propagation of SURTASS LFA signals is desired and expected in open ocean conditions.

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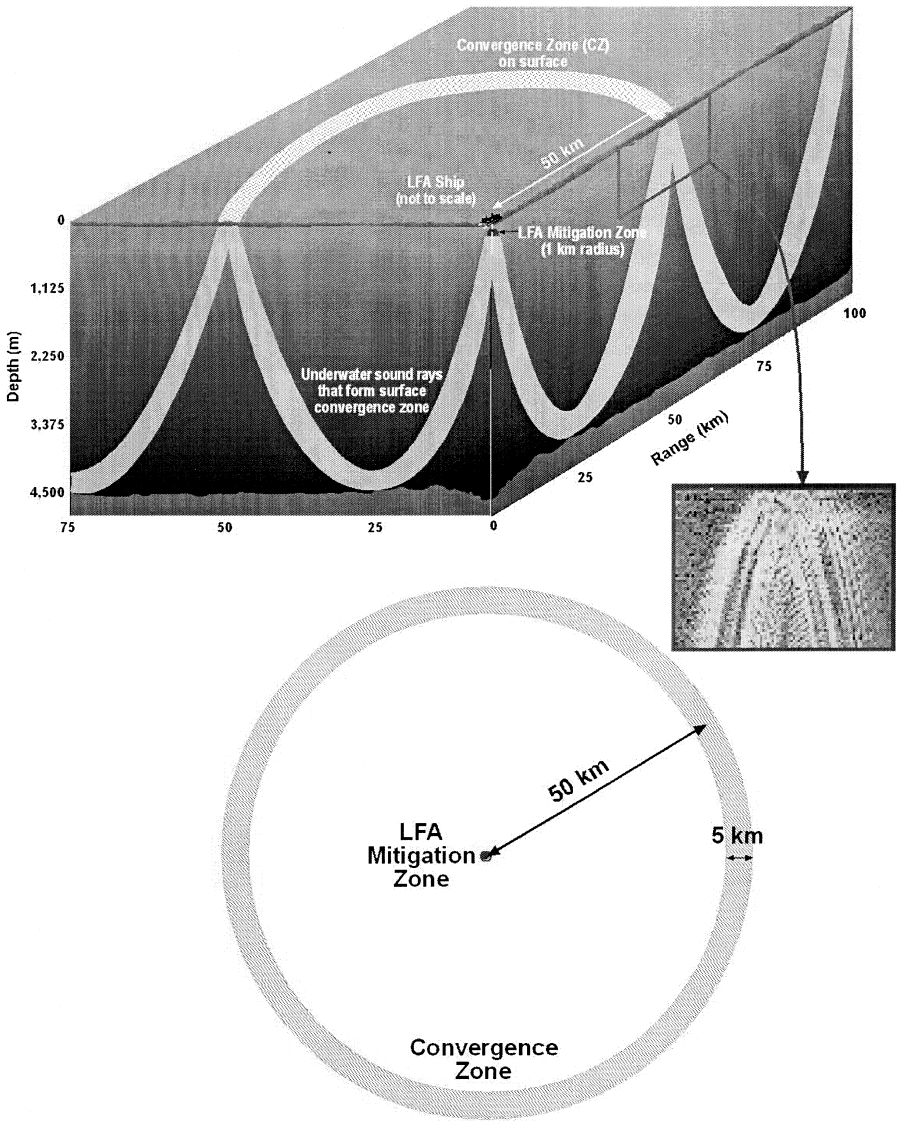

Figure 1. A Schematic of the Propagation of Sound in Convergence Zones.

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Bottom Interaction

Reflections from the ocean bottom and refraction within the bottom can extend propagation ranges. For mid- to high-level frequency sonars (greater than 1,000 Hz), only minimal energy enters into the bottom; thus reflection is the predominant mechanism for energy return. However, at low frequencies, such as those used by the SURTASS LFA sonar source, the sound penetrates the ocean floor, and refraction within the seafloor, not reflection, dominates the energy return. Regardless of the actual transmission mode (reflection from the bottom or refraction within the bottom), this interaction is generally referred to as ''bottom-bounce'' transmission.

Major factors affecting bottom-bounce transmission include the sound frequency, water depth, angle of incidence, bottom composition, and bottom roughness. A flat ocean bottom produces the greatest accuracy in estimating range and bearing in the bottom-bounce mode.

For SURTASS LFA sonar transmissions between 100 and 330 Hz, bottom interaction would generally occur in areas of the ocean where depths are between approximately 200 m (average minimum water depth for SURTASS LFA sonar deployment) and 2,000 m (660 and 6,600 ft).

Shallow Water Propagation

In shallow water, propagation is usually characterized by multiple reflection paths off the sea floor and sea surface. Thus, most of the water column tends to become ensonified by these overlapping reflection paths. As LFA signals approach the shoreline, they will be affected by shoaling, experiencing high transmission losses through bottom and surface interactions. Therefore, LFA sonar will not be effective in shallow, coastal waters.

In summary, for the SURTASS LFA sonar signal in low- and mid-latitudes, the dominant propagation paths for LFA signals are CZ and bottom interaction (<2000 m (6,600 ft) depth). In high-latitudes, surface ducting provides the best propagation. In most open ocean water, CZ propagation will be most prominent. An example of this propagation path is shown in Figure 1. The SURTASS LFA sonar signals will interact with the bottom, but due to high bottom and surface losses, SURTASS LFA sonar signals will not penetrate coastal waters with appreciable signal strengths.

Comments and Responses

On October 22, 1999 (64 FR 57026), NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on the U.S. Navy application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations, if the application was accepted. During the 30-day comment period of that notification, significant comments were received from several organizations and individuals. On March 19, 2001 (66 FR 15375), NMFS published a proposed rule to authorize the U.S. Navy to take small numbers of marine mammals incidental to operation of SURTASS LFA sonar and requested comments, information, and suggestions concerning the request and the regulations proposed to govern the take. The comments provided to NMFS during the ANPR's comment period were addressed in the notice of proposed rulemaking. A copy of the proposed rulemaking document is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Acoustics__Program/acoustics.html*

While the comment period on the proposed rule was for a period of 45 days, the comment period was extended until May 31, 2001, a period of 73 days (66 FR 26828, May 15, 2001). During that time period, NMFS received several thousand comments from organizations and interested citizens. Most of the comments received were petitions, postcards and form letters, either mailed or faxed to NMFS. Approximately 87 letters contained comments, information, and questions that NMFS determined warranted response in this document. Moreover, these letters reflected the same comments that were contained in the other letters and postcards, but in greater detail. They are available for viewing at the following location: *http://fish.nmfs.noaa.gov/ibrm/OPRComments.lhtml?rulein=2*. For those without access to the Internet, copies of these letters and all comments received by NMFS are available from NMFS at copy cost (see **ADDRESSES**).

In addition to written comments, NMFS held three public hearings to obtain oral and written information from the public on NMFS' proposed rule (66 FR 19414, April 16, 2001). These public hearings were held in Los Angeles, CA on April 26, 2001, Honolulu, HI on April 28, 2001, and Silver Spring, MD on May 3, 2001. A copy of any or all of the hearing records is also available from NMFS at copy cost (see **ADDRESSES**).

In this document, NMFS has (1) provided response to comments (RTCs) on both its proposed rule and the Navy's Final EIS; (2) provided cross-references to the appropriate response in the Navy's Final Overseas Environmental Impact Statement and Environmental Impact Statement for SURTASS LFA Sonar (Final EIS) for comments that were addressed in the Navy's Final EIS; (3) edited some comments for clarity and brevity; and (4) grouped similar comments or chosen one or two comments to represent several similar comments. Some comments may not have been addressed because their meaning or relevance was not clear.

In the following sections, NMFS is responding to comments on the Navy activity whether or not the comment was relevant to the Navy's application or the effect of SURTASS LFA sonar on marine mammals and thereby under the purview of NMFS. This was done to further facilitate understanding of the Navy's proposed action, the alternatives identified by the public to SURTASS LFA sonar, and the potential impact of SURTASS LFA sonar on marine mammals.

Activity Concerns (AC)

Comment AC1: The Cold War is over. With no threat from the Russians, why is LFA needed?

Response: It is the opinion of the Navy that the end of the Cold War doesn't end the need for naval surveillance. On 11 October 2001, in testimony before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on the MMPA and SURTASS LFA Sonar, Vice-Admiral Dennis V. McGinn, the Deputy Chief of Naval Operations for Warfare Requirements and Programs made the following statement concerning the need for SURTASS LFA sonar:

> The Navy has an immediate, critical need for SURTASS LFA. By law, the Navy's primary mission is to maintain, train and equip combat-ready Naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas. Antisubmarine warfare, or ASW, is a critical part of that mission. The Chief of Naval Operations (CNO) has stated that ASW is essential to sea control and maritime dominance. Many nations throughout the world can employ submarines to deny access to forward regions or to significantly delay the execution of crucial Navy operations. Because of its inherent stealth, lethality, and affordability, the submarine is a powerful threat. In 1998 the Chief of Naval Operations emphasized the importance of ASW in protecting our national security and set the direction for achieving operational primacy in ASW. He stated that the Navy's goal is to

have the best-trained ASW force in the world, with the right set of tools to prevail in any type of conflict, including the kind we are now facing in the Middle East. My goal here today is to show you why I believe one of the primary ASW tools must be SURTASS LFA.

Comment AC2: War/heightened tension clause is a major loophole allowing the Navy to operate wherever they want without mitigation. Both the Final EIS and the permitting process should address the use of SURTASS LFA sonar during war, combat, and heightened threat conditions.

Response: War, combat, and heightened threat conditions are determined by the Congress or the National Command Authorities (NCA), not the U.S. Navy. Chapter 1 (Purpose and Need) and RTC 1–1.7 of the Final EIS identify the NCA as the President and the Secretary of Defense (or their duly designated alternates or successors), as assisted by the Chairman of the Joint Chiefs of Staff. Since these determinations are not made by the Navy, both the small take application and the Navy's Draft and Final EISs are specifically limited to employment of the SURTASS LFA sonar during training, testing, and routine military operations and will not cover use of the SURTASS LFA system in self-defense, in times of war, combat or heightened threat conditions mentioned by the commenter.

The Final EIS does not include use of SURTASS LFA sonar during these conditions because these operations would be speculative at the EIS stage and outside the Navy's control. Moreover, as noted here, the Council on Environmental Quality (CEQ) regulations, Department of Defense (DOD) Directives and Executive Order (E.O.) 12114 provide specific guidance on what to do in emergencies that are not susceptible to the regular NEPA process.

CEQ Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act under 40 CFR 1506.11 concerning ''Emergencies'' states,

> Where emergency circumstances make it necessary to take action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency.

DOD Directive 6050.1, Environmental Effects in the United States of DOD Actions, implements the above CEQ regulations and provide policy and procedures to DOD officials. This directive defines ''Emergencies'' as they apply to DOD Components to include ''actions that must be taken to promote the national defense or security that cannot be delayed, and actions necessary to protect life or property.''

E.O. 12114 (Environmental Effects Abroad of Major Federal Actions) directs federal agencies to provide informed decision-making for actions that have the potential to significantly harm the environment outside U.S. waters and furthers the purposes of NEPA and other statutes in the global commons. E.O. 12114 Section 2–5 *Exemptions and Considerations* Subsection (a)(iii) states, ''actions taken by or pursuant to the direction of the President or Cabinet officer when national security or interest is involved or when the action occurs in the course of an armed conflict are exempt from the Order.'' Because wartime and heightened threat conditions are provided for by a separate process under CEQ Regulations and are exempted from the requirements of E.O. 12114, consideration of these conditions are outside of the scope of the Final EIS. Therefore, NMFS agrees with the Navy that it is appropriate for these conditions not to be addressed in the Navy's Final EIS.

NMFS is not authorizing the incidental taking of marine mammals during periods of war, combat, and heightened threat conditions in its MMPA application because: (1) The Navy did not request an authorization to cover these conditions, (2) the timing of such events is speculative and outside the control of the U.S. Navy, and (3) because the Navy may not be capable of complying with certain conditions (*e.g.,* area of operations and length of mission, and mitigation and monitoring requirements) contained in the regulations and the Letter of Authorization (LOA). In the rare event that any of these conditions was declared and the Navy's SURTASS LFA sonar assets were included in this condition, an LOA would be placed in abeyance until the war, combat, or heightened threat condition was terminated. Upon its conclusion, NMFS would then reassess the impact on marine mammals using information from the activity area(s) and updated modeling results to determine whether the takings in the future would continue to have no more than a negligible impact on affected marine mammal stocks. For example, additional mitigation might be required to ensure that the stocks affected during the heightened threat condition were not additionally impacted during the period of the regulations' effectiveness.

Comment AC3: A lower-powered, shorter-range system should be used. In a discussion of the supercavitation technology and the Russian Skval torpedo, the commenter stated, ''they [the Russians] have also been selling Kilo-Class diesel-electric submarines to nations like North Korea. These submarines are super quiet * * *.''

Response: According to the Navy, a lower-powered, and thus shorter-range, system will not meet the Navy's stated need for long-range detection of quiet submarines. The latter statement in the comment reinforces the Final EIS Purpose and Need statement for the development of SURTASS LFA sonar technology and the immediate need to be able to detect these quiet submarines at long range.

Comment AC4: One commenter believes that SPAWAR (Space and Naval Warfare Systems Command) in San Diego (TD3105) stated that SURTASS LFA System was apparently successfully used to locate Soviet submarines during the Cold War.

Response: The referenced statement by SPAWAR actually stated that the SPAWAR Systems Center focused its efforts on the development of *capabilities* to detect and track Soviet nuclear submarines operating in deep water. It also stated that these efforts (development of capabilities) were successful for several systems, such as SURTASS LFA sonar. SPAWAR did not state that SURTASS LFA sonar was used to *actually* track Soviet submarines during the Cold War.

Comment AC5: The Final EIS states that SURTASS LFA sonar is needed to protect ''choke points'' through which international shipping moves. It also states that LFA operations would generally not occur in areas of high human activity such as high shipping density. Also, will LFA be used in the littorals? If so, the EIS claim that near-shore environments will not be the focus of SURTASS LFA appears to be false.

Response: According to the Navy, SURTASS LFA sonar is a long-range sonar, it does not have to operate in, or near, ''choke points'' nor close to shore to detect submarines at long range.

SURTASS LFA sonar may support operations that take place in the littoral zone. However, according to the Naval Doctrine Command (1998), littoral zone refers to that area off the coast where naval forces conduct strategic sealift operations, control or interdict sea lines of communication, and project power ashore. The latter objective may entail operations up to approximately 200 nautical miles (nm) (370.4 km) from the coast. However, mitigation measures

prohibit SURTASS LFA sonar from transmitting an SPL greater than 180 dB at a distance of 12 nm (22 km) from any shore.

Comment AC6: One commenter has described a scenario in which the enemy deploys numerous decoys, or ''phantom submarines,'' to confuse the SURTASS LFA sonar computer. He also states that merely by transmitting, the LFA vessel will give away its position.

Response: As stated in the Final EIS (RTC 1–1.6), the SURTASS LFA sonar vessel cannot remain undetected when transmitting, but it will be protected by naval forces. The use of decoys is a standard countermeasure for undersea warfare, one that has been taken into consideration in the planning and design of sonar systems and tactics.

Comment AC7: Use the military intelligence community to address the diesel submarine threat from rogue nations.

Response: According to the Navy, the intelligence community does provide the Navy Fleet Commanders-in-Chief with information regarding threat submarines. However, real-time, tactical information is still needed from SURTASS LFA sonar for theater commanders to respond to these threats.

Comment AC8: SURTASS LFA sonar is the loudest sound ever produced by man. SURTASS LFA sonar will add tremendously to the problem of ocean noise pollution through the use of very high-energy sound blasting coupled with the long-range underwater effects characteristic of LF sound.

Response: The maximum sound exposure an animal could receive from SURTASS LFA sonar is 215 dB. This is not the loudest sound in the oceans from natural or human sources, nor is it the greatest source of sound energy (in lay terms, the total quantity of sound) in the oceans. Each year billions of lightning strikes hit the ocean with source levels of about 260 dB. Earthquakes and other geological events that exceed 230 dB occur about 1,000 times per year in the Pacific Ocean alone, and 10,000 of them occur that exceed 205 dB. Frankel (1994) estimated the source level for singing humpback whales to be between 170 and 175 dB while Au and Andrews (2001) measured their calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald *et al.* (2001) to be 186 dB. Watkins *et al.* (1987) and Charif *et al.* (2002) found source levels for fin whales up to 186 dB, and MØhl *et al.* (2000) recorded source levels for sperm whale clicks up to 223 dB (rms).

Aside from explosions, the loudest human noise in the oceans is from airgun arrays used in oil and gas exploration. World-wide, there are approximately 150 vessels that conduct these surveys. With source levels of up to 255 dB, and capable of shooting every 10 seconds around the clock, any one of these surveys can put more acoustic energy into the ocean annually than SURTASS LFA sonar. However, the greatest source of sound energy in the oceans caused by humans is from commercial shipping. SURTASS LFA sonar and all other impulsive human noises could be eliminated and noise levels in the oceans would continue to rise because of shipping alone.

Comment AC9: Provide LFA source level (SL) and attenuation. Define the difference between actual and effective SL of the LFA array. NMFS personnel do not understand that the effective source level of LFAS really is 240 dB. The cumulative sound produced by the LFA array is not limited to the volume of each speaker.

Response: As stated in the Final EIS (RTC 2–1.1 and 2–1.2), the SL of an individual SURTASS LFA source projector is approximately 215 dB. Because the SURTASS LFA array employs more than one source projector, the effective (not actual) SL of the array is a theoretical calculation based on the sound field beam formed by the array at a range of hundreds of meters from the array, where propagation loss has already caused a decrease in received level (RL) of over 40 dB. Therefore, in the proximity of the SURTASS LFA sonar array, the SL approximates that of an individual projector (215 dB), and the sound field of the array is not higher than the SL of an individual projector. For a more detailed explanation see the Final EIS, Appendix B, Subchapter B.3.1.

Comment AC10: The Navy stated that LFA intensities under 215 dB will not ''fulfill the purpose.'' Therefore, there is the likelihood that higher levels will be used during actual military operations. Source level of 215 dB is neither necessary nor desirable. Source levels can be reduced by using: (1) longer duration source signals, (2) replacing single array with multiple arrays, and (3) multi-ship arrays.

Response: According to the Navy, in order to meet the requirement for long-range detection, 215 dB SL is necessary. There will be no transmission levels of greater than 215 dB for each projector. The three items mentioned by the commenter will not reduce the SLs. These items are already part of ASW operations. First, long duration signals of up to a 100-second duration are used by SURTASS LFA sonar. Second, a new twin line SURTASS passive array is being developed to improve detection and will be used with SURTASS LFA sonar. Finally, multiple-ship receive arrays are used. Passive-only SURTASS vessels can be used to receive the SURTASS LFA signal from vessels with the active (LFA) component installed. See the Final EIS (RTC 1–1.3) for more information.

Comment AC11: Passive alternatives to SURTASS LFA sonar (*e.g.*, ADS (Advanced Deployable System), Twin Line SURTASS, Acoustic Rapid Commercial-off-the-shelf Insertion (ARCI) processing, Robust Passive Sonar, ''Acoustic daylight'' technology) were not considered.

Response: Passive alternatives to SURTASS LFA sonar are discussed in the Final EIS (RTCs 1–2.1, 1–2.2, and 1–2.3). Effective ASW operations require the ability of Fleet Commanders-in-Chief to balance many variable factors, both tactical and environmental, to provide the acceptable probability of detection of threat submarines. The Navy has investigated and/or developed many technologies with the potential to meet its detection needs. These include both passive and active systems. According to the Navy, no one single technology will provide the solution during all tactical and environmental conditions. As stated in the Final EIS (page 2–2), LFA sonar ''is an augmentation to the passive [SURTASS] detection system, and is planned for use when passive performance is inadequate.'' While in some instances passive sonar can provide the detection required, under most conditions, passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, hard-to-find submarines during all conditions, particularly at long ranges.

Comment AC12: What are the potential and specific conditions for exceeding 180 dB re: 1 micro Pa (root mean squared (rms)) beyond the 1-km (0.54-nm) mitigation zone? How does that relate to mitigation effectiveness?

Response: Under almost all oceanographic conditions, the 180-dB SPL will not be beyond 1 km (0.54 nm) from the array. Even under ducted or CZ conditions, spherical spreading losses will dominate transmission losses within 1 km (0.54 nm). The actual 180 dB SPL will vary from 750 to 1,000 m (0.4–0.5 nm) from the array. This will not influence mitigation effectiveness.

Comment AC13: In Comment 2–2.1 (in the Final EIS), the Navy states that ''the restricted areas will not affect SURTASS LFA sonar routine training and testing, as well as the use of the system during military operations.''

However, on page 2–23 this is contradicted because the Navy stated that ''Alternative 2 [unrestricted operations] would provide Fleet operators with * * * maximum submarine detection capability * * *.''

Response: Training operations under Alternative 1 in the Navy's EIS will not provide for maximum submarine detection capabilities because of the geographic restrictions. However, Alternative 1 is the Navy's preferred alternative in order to protect marine mammals and as a result a small take authorization under the MMPA was not requested for Alternative 2, which would have a potential for increased marine mammal takes.

Comment AC14: Why was the discussion of ''Time Reversed Acoustics'' as applied to LFA Sonar by NATO (North Atlantic Treaty Organization) and SACLANT (Supreme Allied Commander, Atlantic Center) research omitted from the Final EIS?

Response: There was no discussion of time reversed acoustics in the Final EIS because: (1) No comments were received concerning this issue on the Draft EIS, and (2) It is not relevant to SURTASS LFA sonar analysis. The article referenced by the commenter is Fink (1999) (Scientific American 283(11): 91–97). The commenter stated, ''This is an article about a Low Frequency Active Sonar application employed by NATO and the SACLANT research being done.'' A review of the article found no reference to SURTASS LFA sonar. The NATO/SACLANT experiment concerned underwater communications.

Comment AC15: Individual skippers, untrained in the effects of sound on wildlife, will be allowed to make their own instantaneous assessments based solely on military and political consideration, answerable to none.

Response: NMFS disagrees. The U.S. Navy has asserted that it is committed to full compliance with the LOA issued by NMFS for taking marine mammals incidental to operating SURTASS LFA sonar. Under the LOA, shutdown criteria will be followed whenever a marine mammal is detected prior to entering the 180-dB SURTASS LFA mitigation zone.

Marine Mammal Impact Concerns (MMIC)

During the public comment period, several issues were raised that related more to interpretation of the MMPA than to a discussion of impacts on marine mammals. The former issues are addressed later in this document (see *MMPA Concerns*).

Selection of Species

Comment MMIC1: The impacts on endangered, threatened and depleted species and stocks have not been properly assessed. Specifically mentioned were the migration paths of the female northern (Atlantic) right whale, dugong, and blue and fin whale concentrations in the open ocean.

Response: NMFS believes that impacts to threatened, endangered and depleted species and stocks have been addressed and properly assessed in the Draft and Final EISs. In addition, the Navy has completed formal section 7 consultation under the Endangered Species Act (ESA) with NMFS with the issuance of a Biological Opinion. One result of that consultation is that the Spitzbergen stock of bowhead whales may be subject to Level B harassment. As a result, that stock has been added to the list of authorized species under these regulations.

Animals in unspecified migration corridors and open ocean concentrations are adequately protected by the tripartite mitigation protocols. Dugongs are discussed in RTC MMIC2.

Comment MMIC2: Dugongs occur more than 12 nm (22.2 km) offshore in Australian waters. The U.S. Fish and Wildlife Service (USFWS) should be consulted.

Response: Dugongs are usually found in calm, sheltered, nutrient-rich water less than 5-m (16.4 ft) deep, generally in bays, shallow island and reef areas which are protected against strong winds and heavy seas and which contain extensive sea grass beds. However, they are not confined to inshore waters. There have been sightings near reefs up to 80 km (43.2 nm) offshore in waters up to 37 m (121.4 ft) deep. The average minimum water depth that the SURTASS LFA vessel will operate is 200 m (656.2 ft). The shallowest depth that it can operate is 100 m (328 ft). As a result of sound attention in shallow and shoaling water, dugongs are unlikely to be affected.

The USFWS was consulted. On 18 May 1998, the Department of the Navy, pursuant to section 7 of the ESA, as amended, requested that the USFWS provide a compilation of listed, proposed, and candidate threatened and endangered species under the cognizance of the USFWS covering the ocean regimes in which SURTASS LFA sonar was intended to operate. A copy of this letter was provided in Appendix A of the Final EIS. In addition, the USFWS and the Department of the Interior were provided copies of both the Draft and Final EISs. Because of the offshore nature of SURTASS LFA sonar operations, the Navy determined that endangered or threatened species or the critical habitat of any protected species under the jurisdiction of the USFWS will not be affected.

Comment MMIC3: Based on their marked avoidance responses (fleeing up to 80 km (43 nm) from an area where first disturbed) to relatively low levels of LF sounds between 94 and 105 dB (i.e., the 20–1000 Hz band) produced by icebreakers at extraordinarily long ranges, why were white whales (belugas) in Cook Inlet determined not to be affected by LFA sonar operating in the Gulf of Alaska?

Response: This was discussed in the Final EIS (RTCs 3–2.10 and 3–2.11). The Cook Inlet beluga stock is located in coastal waters and, therefore, is not within the geographic region that SURTASS LFA sonar would operate. Cook Inlet beluga stocks are also unlikely to be subject to SURTASS LFA sonar signals considering the significant coastal sound attenuation prior to reaching Cook Inlet. This assumption has been verified through modeling, as depicted in Figure B–1 of Technical Report (TR) 2. This stock of belugas, therefore, was excluded from further analysis. More information is provided in the Final EIS Subchapter 3.2.5.1.

Furthermore, NMFS does not believe that the discussion on icebreaking vessel noise provided by the commenter is valid for SURTASS LFA sonar. First, NMFS believes the sounds affecting belugas at great distances were not in the 20–1,000 Hz range, but instead were in the 5-kHz range as cited by Richardson *et al.* (1995, p. 257) from the work by Cosens and Dueck (1993). Those latter authors expand on Richardson *et al.* (1995) by noting that belugas are relatively insensitive to sounds below 1 kHz, thus they are unable to detect LF ship noise beyond a few hundred meters of the source even though the source level is high (e.g., 501 Hz at 110 dB = 0.65 km). Higher frequency components of icebreaking vessel noise should be detectable at greater distances because the source levels are relatively high and detection thresholds (of belugas) at those frequencies are relatively low (Cosens and Dueck, 1993). Second, NMFS believes the commenter has taken Richardson *et al.* (1995) out of context. Richardson *et al.* (1995) did not state ''fleeing up to 80 km from an area where first disturbed at levels between 94 and 105 dB.'' The commenter has combined two separate discussions in Richardson *et al.* (1995). What Richardson *et al.* (1995) stated was that after initially being displaced by relatively low levels of noise from the approaching ship (94

to 105 dB in the 20 to 1000 Hz range), the whales sometimes returned 1 to 2 days later when the icebreaking noise levels were still as high as 120 dB. On page 257, Richardson *et al.* (1995) stated that belugas travel up to 80 km (43.2 nm) from the ship track, and typically remain away for 1 to 2 days. They also indicated that this may be due to the high frequency component. Also, this paragraph in Richardson *et al.* (1995) refers to both belugas and narwhals and references Finley *et al.* (1990) (which concerns both whale species). So, it's unclear whether Richardson *et al.* (1995) was referring to narwhals or belugas.

Concerning the belugas ''fleeing,'' on page 256 Richardson *et al.* (1995) stated, ''Belugas are rather tolerant of the frequent passages by larger ship vessels traveling in consistent directions in summering areas such as the St. Lawrence River, Cook Inlet, and Beaufort Sea. * * * However, belugas often flee from fast and erratic moving small boats.'' Icebreakers are not particularly fast, do not move erratically, and are not small. Also, as noted by Cosens and Dueck (1993), the environmental conditions in Lancaster Sound are likely very different than in other areas, such as Cook Inlet. Belugas in Lancaster Sound are inexperienced with shipping noises. Therefore, NMFS considers that the comparison provided by the commenter is not valid for SURTASS LFA sonar.

Comment MMIC4: The EIS completely dismisses organisms that cannot hear in the LF range-humans or toothed whales and dolphins.

Response: The Draft and Final EISs do not dismiss organisms that cannot hear in the LF range. In the Final EIS Subchapter 3.2.1, one of the criteria for analysis of potential impacts is that the organism must have organs or tissues with acoustic impedance different from water or be able to sense LF sound. Potential impacts to human divers and odontocetes are extensively discussed and analyzed. It should also be noted that humans and most odontocetes (which includes dolphins) are capable of hearing in the LF range.

Comment MMIC5: NMFS dismissed concerns of one commenter that ice seals were excluded from consideration in the Draft EIS.

Response: In response to the Marine Mammal Commission (MMC) comment on the Draft EIS, the hooded seal was included in the analysis in the Final EIS and the proposed rule. Also, see Final EIS (RTC 3–2.10).

Potential Effects

Comment MMIC6: The Navy has dismissed behavioral effects below 180 dB as temporary and thus biologically insignificant.

Response: The potential for significant changes in biologically important behavior is considered from 119 to 180 dB as discussed in the Final EIS Subchapter 4.2, specifically 4.2.3.2 and in TR 2.

Comment MMIC7: Intense noise can cause strandings at a variety of frequencies and at RLs well below 180 dB; therefore, there is potential for strandings to occur from deployment of LFA. RLs lower than 180 dB re 1 micro Pa (RMS) can be extremely harmful, even lethal. The Grecian and Bahamian stranding events strongly suggest that SPLs far lower than 180 dB from mid-frequency and LF sounds could have lethal effects on several species of beaked whales over relatively large geographic areas. Therefore, the 1-km (0.54-nm) safety zone is inadequate.

Response: While NMFS agrees that intensive sounds could result in strandings at various frequencies for those marine mammals whose hearing includes the primary frequencies of the sound source, NMFS does not agree with the statements that strandings would occur at levels significantly less than 180 dB. First, results of the Low Frequency Sound Scientific Research Program (LFS SRP) indicated no significant change in biologically important behavior for exposure to sound levels up to 155 dB; i.*e.*, there were no behavioral reactions indicating that marine mammals were being significantly affected or injured. Even though there is an increased probability of behavioral harassment from 155 to 180 dB, there is no indication that behavioral harassment impacts could cause strandings. It should also be noted that many whales vocalize in this range and are not known to result in strandings. With regard to the potential for injury below 180 dB from possible resonance effects, Cudahy and Ellison (2002) noted that ''each of the *in vivo* (in the living body) and theoretical studies related to potential tissue damage from underwater sound support a damage threshold on the order of 180 to 190 dB.'' This tissue damage could include lung damage and hemorrhaging. Also, it has been hypothesized that LF sound could cause bubble growth from supersaturated gases in the blood (similar to the human diver condition known as the bends). Crum and Mao (1996) stated that received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (See Final EIS, page 10–137).

Moreover, the Navy's monitoring and mitigation protocols proposed for employment of SURTASS LFA sonar will preclude employment in narrow and deep channels surrounded by land such as those in the Bahamas (22-km/12-nm restriction); and the shut-down criteria for the Navy's high-frequency marine mammal monitoring (HF/M3) sonar has been expanded to include any detection by the HF/M3 sonar that is classified as a marine mammal, which could occur up to 1 km beyond the SURTASS LFA sonar mitigation zone. The stranding of Cuvier's beaked whales in the Mediterranean in 1996 was considered in the SURTASS LFA sonar impact analysis. For details, see the Final EIS pages 3.2–45 to 3.2–47. Both the Greek and Bahamas strandings involved beaked whales. These species are mid-frequency specialists. The only common acoustic source to both events was in the mid-frequency range.

For discussion on whether or not the 1-km (0.54 nm) safety zone is adequate, please see Mitigation Concerns later in this document.

Comment MMIC8: The assumption that temporary threshold shift (TTS), even when it lasts for days, does not constitute injury is intrinsically flawed. TTS may lead to increased vulnerability to predation or to confusion, which may lead to stranding and death.

Response: TTS is a change in the threshold of hearing (the quietest sound an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. As such, it could result in a temporary disruption of behavioral patterns, thereby resulting in Level B harassment under the MMPA. The best research to date indicates that the distortion and dysfunction of sensory tissue observed during TTS are only temporary and fully reversed upon recovery (*i.e.*, occasional TTS produces no permanent tissue damage to the ear, only the temporary nondestructive impairment of tissue that fully recovers). This type of temporary nondestructive impairment, as well as the use of TTS in human damage risk criteria, is the scientific basis for not considering TTS as an injury.

Acousticians are in general agreement that a temporary shift in hearing threshold of up to 40 dB due to moderate exposure times is fully recoverable and does not involve tissue damage or cell loss. Liberman and Dodds (1987) state, ''* * *acute threshold shifts as large as 60 dB are routinely seen in ears in which the

surface morphology of the stereocilia is perfectly normal.'' Stereocilia are the sensory cells responsible for the sensation of hearing. In the chinchilla, no cases of TTS involve the loss of stereocilia, but all cases of PTS do (Ahroon *et al.*, 1996). Cell death clearly qualifies as Level A harassment (injury) under the MMPA. Because there is no cell death with modest (up to 40 dB) TTS, such losses of sensitivity constitute a temporary impairment but not an injury. Since the boundary line between TTS and PTS is not clear, definitive, and predictable for marine mammals, NMFS has adopted the standard that 20 dB of TTS defines the onset of PTS (*i.e.*, a temporary shift of 20 dB in hearing threshold). This intentionally conservative standard is appropriate because all of the research on stereocilia has been done on terrestrial mammals, which may be poor models for marine mammals since marine mammals have evolved to withstand large pressure change differentials during diving. This should not be interpreted to mean that the onset of PTS results from adding 20 dB to the dB level found to cause the onset of TTS in an animal, but instead means that the onset of PTS is the sound exposure in level (dB) and duration that would cause a temporary shift of 20 dB in hearing threshold.

As stated in previous actions (66 FR 22450, May 4, 2001), second level impacts (such as potential predation) due to a marine mammal having a temporary hearing impairment cannot be predicted and are, therefore, speculative and difficult to quantify. In fact, any disruption of behavior (Level B harassment) could, with suppositions, be seen as potentially dangerous and, therefore, considered potentially injurious (Level A harassment) as well. Similarly, all injuries could be seen as being accompanied by some disruption of behavior and therefore, Level B disturbances as well as Level A injuries. Such reasoning blurs the distinctions that the statutory definitions of harassment attempt to make.

NMFS believes that Level B harassment, if of sufficient degree and duration, can be very serious and requires consideration when making impact determinations. For example, moderate TTS does not necessarily mean that the animal cannot hear, only that its threshold of hearing is raised above its normal level. The extent of time that this impairment remains is dependent upon the amount of initial TS, which in turn depends on the strength of the received sound and whether the TTS is in a frequency range that the animal depends on for receiving cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events, may also result in short-term decreases in an animal's ability to hear as well as normal. For example, ambient noise in the Hawaiian Islands Humpback Whale National Marine Sanctuary increases seasonally in conjunction with an increase in humpback whale abundance, with no known impacts to these animals. NMFS scientists believe that marine mammals have likely adopted behavioral responses, such as decreased spatial separation, slower swimming speeds, and interruption of socialization to compensate for increased ambient noise or hearing threshold levels.

A hypothesis that marine mammals would be subject to increased predation presumes that the predators would either not be similarly affected by the resultant SPL or would travel from areas outside the impact zone, indicating recognition between a sonar signal at some distance and potentially debilitated food sources. Moreover, NMFS notes that TTS does not cause confusion or disorientation. Disorientation is caused by vestibular affects to the inner ear, not related to TTS (although an animal having vestibular effects could also suffer from TTS). For example, humans attending certain sport or music events may incur a TTS impairment due to the noise, but are not noted for being disoriented afterwards, unless caused by something other than noise. Therefore, NMFS does not believe the evidence warrants that TTS be considered as an injury.

However, because of the SURTASS LFA sonar mitigation zone and the use of the HF/M3 sonar to locate mammals prior to incurring potential injury, the number of animals that might experience an injury from SURTASS LFA transmissions is considered to be few to none. Therefore, no expected increased vulnerability to predation or confusion by SURTASS LFA sonar is expected. This issue will be discussed later in this document (see RTC MMIC40).

Comment MMIC9: There is no evidence that TTS should not occur at SPL of below 180 dB. Caution should be used in citing studies (such as Schlundt *et al.*, 2000) where captive animals were used and the subject animals were not considered to be at the highest risk from LF sound.

Response: The two species tested in Schlundt *et al.* (2000), were tested at their best hearing frequencies (i.e., mid-frequency). In fact, neither the tested bottlenose dolphins nor the belugas exhibited TTS after a 1-second exposure to maximum levels of 193 dB at 0.4 kHz (400 Hz), the approximate frequency range of SURTASS LFA sonar. NMFS agrees, however, that TTS may occur below 180 dB, depending in part on the duration of the signal and the frequency sensitivity of the recipient. Schlundt *et al.* (2000) showed that bottlenose dolphins experience onset of masked TTS (defined as 6 dB of shift) from a one-second, 3 to 75 kHz, exposure at approximately 192 dB RL sound. Assuming a 3-dB exchange rate (e.g., the same amount of shift would result from reducing the intensity by 3 dB and doubling the exposure time (Finneran *et al.,* 2000)), these odontocetes could experience TTS (Level B harassment) from a 16-second exposure to a 180-dB sound at their best frequency, a 32-second exposure at 177 dB, and a 100-sec. exposure at 173 dB. Since this approximation is for mid-frequency marine mammal specialists at mid-frequency sound levels, NMFS believes it is probable that LF marine mammal specialists would incur TTS (Level B harassment) at similar levels and duration to LF sounds. However, the typical SURTASS LFA signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions last between 6 and 100 seconds, although the duration of each continuous frequency sound transmission is never longer than 10 seconds. Therefore, the SURTASS LFA signal itself, while possibly capable of causing TTS (Level B harassment), is unlikely to result in Level A harassment (injury) in marine mammals at levels below 180 dB.

Comment MMIC10: Why does NMFS focus on ''serious injury'', assumed as PTS, whereas the MMC and many other experts have declared that behavioral impacts of biological significance to reproduction and survival cannot be ruled out as results of exposure to LFA well below 180-dB RL? According to NMFS, these impacts cannot be observed over the short term, cannot be mitigated, cannot be quantified as reliable data, and cannot be considered without delaying deployment of LFA. NMFS excludes ''behavioral modifications'' biologically significant to reproduction and survival because they cannot be observed.

Response: NMFS and the Navy concur that behavioral impacts of biological significance can occur at SPLs below 180 dB. This is implicit in the calculations for Level B takings conducted using the Acoustic Integration Model (AIM). For Level B incidental harassment takings, NMFS

will determine whether takings by harassment are occurring based on whether there is a significant behavioral change in a biologically important activity, such as feeding, breeding, migration or sheltering. All of these activities are potentially important for reproductive success of a marine mammal population.

However, NMFS and the Navy focus on reducing the level of incidental take by injury, through appropriate mitigation measures (discussed elsewhere in this document), because it believes that injury and mortality can be reduced to the lowest level practicable through various monitoring and mitigation means. In addition, extensive AIM modeling aggregate data results versus probability of risk for all marine mammals modeled at 32 sites worldwide illustrated that the preponderance of all modeled received levels were below 155 dB. This is in the range of exposures in the LFS SRP during which no behavioral impacts of biological significance were observed. Moreover, as detailed elsewhere in this document, NMFS will work with the Navy to undertake a research program to validate impacts on marine mammals and the estimated harassment takes in the area outside the 180-dB isopleth (see RTC MOC25).

Comment MMIC11: Just because animals remain in a particular environment with anthropogenic noise sources present does not mean that they are not negatively impacted by it. They may tolerate the interfering and/or fatiguing effects of the noise because it is occurring in an area of particular biological significance.

Response: NMFS and the Navy agree that animals exposed to SURTASS LFA sonar signals may continue feeding. Phase I of the LFS SRP demonstrated this for blue and fin whales. Also, California sea lions (at Ballard Locks, Seattle, WA) and seals approaching aquaculture pens that are equipped with acoustic harassment devices will feed even in the presence of intense sound sources. However, the 180-dB safety zone for SURTASS LFA sonar insures that no animals will be exposed above that level regardless of context. The 180-dB limit is conservative because both blue and fin whales are known to produce vocalizations at 186 dB. That is, the SURTASS LFA criterion affords animals protection from SPLs that they may commonly experience from other animals.

The alternative hypothesis is discussed in RTC 4–5.39 of the Final EIS.

Comment MMIC12: The LOA application and the Final EIS state, ''Even with a 25 percent reduction in foraging efficiency for all of the 20 days, this would represent only a 5 percent reduction in food intake for that season.'' The commenter believes that a reduction of 5 percent might affect breeding success, or survival.

Response: Based on the natural regional and annual variability in chlorophyll concentrations that indicate food production for many marine mammals, particularly the baleen whales, a 5 percent change in food availability falls within very reasonable statistical bounds. While this does not necessarily mean that an animal would not change its foraging range in order to make up for a food deficiency in one area, it does point up the high probability that from year-to-year, marine mammals can be expected to have different levels of food intake. Thus, a one-time 5 percent change in food intake for a single season (provided the animal is not affected in more than that single season) is considered to have a very low probability of exerting any significant change in that animal's survival or breeding success; and certainly will not affect an animal stock in any significant way.

Comment MMIC13: No research done on effects of marine mammals feeding, or the species upon which they feed.

Response: The LFS SRP conducted research related to marine mammal feeding. The goal of the LFS SRP was to demonstrate avoidance reactions for LF-sensitive species (baleen whales) during critical biological behaviors (foraging/feeding, migrating, breeding). Phase I of the LFS SRP conducted manipulative field experiments to test the effects of LF sound on foraging fin and blue whales off San Nicolas Island, CA. For additional information see Croll *et al.* (2001) and TR 1.

In addition, the potential effects of SURTASS LFA sonar on fish and prey species are covered in the Final EIS Subchapters 4.1.1 and 4.2.7.6. The potential effects on invertebrates are covered in the Final EIS Subchapter 3.2.1.1.

Non-Auditory Metrics

Comment MMIC14: It is incorrect to pick sensory modality for the only discussion concerning the potential harm to marine mammals from mid- and low-frequency sonar. To support this, Richardson *et al.* (1995) was paraphrased in a misleading way because the authors listed four zones of noise influence in which the fourth and most extreme was the zone of hearing loss, discomfort, or injury that is in the ''area near the noise source * * *.'' In other words, NMFS has inappropriately attempted to lead the discussion toward auditory effects, whereas the authors cited, and objective reviewers clearly recognize, that there are many non-auditory traumas attributable to sound received at high levels. Those listed by the commenter included lung damage and organ system hemorrhage, vestibular dysfunction, and bubble growth in tissue.

Response: NMFS does not agree that it has paraphrased Richardson *et al.* (1995) incorrectly. While Richardson *et al.* (1995) listed only four types of noise influence, in recent years, NMFS has defined six categories of noise based on Richardson *et al.* (1995), but updated by Richardson in several small take applications (see for example, BPXA, 1999; Western Geophysical, 1999, 2000; WesternGeco, 2001). This updated information was incorporated into the preamble to the proposed rule. Recently, NMFS has updated small take notices with recognition that there is a potential for non-auditory impacts from loud noises. For example, in the preamble to the final rule for NPAL (66 FR 43442, August 17, 2001) NMFS noted that ''intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.'' This statement has been added into the current document in recognition of the potential for non-auditory impacts from loud noise events.

However, what is relevant in this document and in the Final EIS is whether or not marine mammals will be exposed to SURTASS LFA signals at high enough intensities to cause non-auditory traumas. With the proposed mitigation measures, the Final EIS analysis concluded that the potential impact on any stock of marine mammals from injury is considered negligible, and the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. These potential effects include non-auditory traumas (tissue damage), which are considered to be injuries.

Since the release of the Final EIS, an investigation by Cudahy and Ellison (2002) noted that the expected threshold for *in vivo* (in the living body) tissue damage (including lung damage and hemorrhaging) for LF sound is on the order of 180 to 190 dB. Vestibular effects themselves, which could affect balance and equilibrium, while not considered to be an injury, could be a manifestation of an injury when caused by an impact such as PTS. However, these effects are based on humans.

Vestibular function was investigated by the Navy during the Diver's Study and the results reported in TR 3. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. It should be kept in mind that guinea pigs are not aquatic species and, as such, are not as robust to pressure changes as marine mammals. Finally, as stated in Crum and Mao (1996) and as discussed in the Final EIS (page 10–137), researchers hypothesized that the received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood. Because the above ''non-auditory traumas'' are not expected to result from sound exposure below SPLs of 180-dB and the high detection rate of the HF/M3 sonar assuring required SURTASS LFA sonar shutdown when any marine mammal approaches or enters the 180-dB SURTASS LFA mitigation zone, the risks of these traumas to a marine mammal approach zero.

Comment MMIC15: The Navy and NMFS have systematically underestimated the number of animals that may be taken by SURTASS LFA sonar, if deployed, because: (1) Neither the Navy nor NMFS has considered the potential for non-auditory physiological impacts; (2) neither has meaningfully evaluated the potential for stranding; (3) both have underestimated the potential for auditory impacts; (4) both have failed to consider the full range of behavioral impacts and have underestimated the potential for those it has considered; (5) neither has accounted for cumulative and synergistic impacts of multiple active systems or other sound sources operating in the same region; and (6) both have underestimated or have failed to assess impacts on prey species.

Response: The number of animals potentially taken has not been underestimated. On the contrary, the analysis contained in the Draft and Final EISs has erred on the side of caution. The analysis is based on criteria for impacts based on the potential effects to baleen whales, which are considered the most sensitive marine mammals to LF sound (Ketten, 2001). These potential effects are then applied equally to all marine mammals that, based on geographic demographics, could be exposed to the SURTASS LFA sonar signal. Most of these animals are not as sensitive to LF sound as the baleen whales. Some may be nearly as sensitive, such as the sperm whale and elephant seal; but more are predominately sensitive to mid- to high-frequency sounds. Other conservative assumptions used in the analysis are presented in the Final EIS Subchapter 1.4.3. Responses to the specific issues are provided here in summary and in detail later in this document:

Non-auditory physiological impacts: As mentioned in RTC MMIC20, Cudahy and Ellison (2002) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB.

Stranding: This issue is addressed in detail starting with RTC MMIC22 in this document. In addition, a review of all SURTASS LFA operations with recorded stranding events determined that there have been no strandings associated with SURTASS LFA sonar.

Auditory impacts: The potential for auditory impacts as discussed in the Draft and Final EISs is based on scientific research and conservative analyses.

Behavioral impacts: The criteria for the potential risk of significant change in biologically important behavior, which are discussed in detail in the Draft and Final EISs, are based on scientific research and conservative analyses. See RTC MMIC10 and MMPAC22a in this document.

Cumulative impacts: Cumulative impacts are covered in the Final EIS in Subchapter 4.4. The synergistic impact of multiple active systems is analyzed in the Final EIS Subchapter 4.2.7.4. In addition, SURTASS LFA sonar operations will usually avoid areas with high levels of LF noise/sound (*e.g.,* seismic surveys).

Prey species: Prey species are discussed in the Final EIS. Many of these species, such as squid and zooplankton, are not analyzed because they did not meet the screening criteria used in the Draft and Final EISs for determining whether species would be impacted as determined in Croll *et al.* (1999). Fish species are covered in the Final EIS Subchapters 3.2.2 and 4.1.1. Additionally, during the LFS SRP Phase I, prey field studies were conducted. Variations in these fields were within the normal prey field variations expected from typical changes in natural oceanographic conditions (see TR 1 for more information).

Therefore, based on the above information, NMFS concludes that the potential takes of marine mammals from the operation of the SURTASS LFA sonar has more likely been overestimated by the Navy than underestimated.

Comment MMIC16: One commenter notes that the LOA application states, ''* * * a marine mammal would have to receive one ping greater than or equal to 180 dB or many pings at a slightly lower RL to possibly incur non-serious injury.'' This, the commenter believes, is inconsistent with discussions elsewhere in the LOA application and the Final EIS and proposed rule. According to those discussions, ''all marine mammals who receive a ping greater than 180 dB are presumed to be injured (that is, seriously injured).'' This is presented as conservative because the mitigation seeks to exclude all marine mammals from the 1 km (0.54 nm) ''serious injury impact zone (corresponding to the 180 dB sound field).'' Therefore, marine mammals will definitely incur serious injury, as a ''conservative'' assumption. Clarify ''serious injury'' well inside of the 180–dB zone and any animal within the 180–dB zone is considered to be injured. The possibility of damage should be at 1 km (0.54 nm), not next to the array.

Response: Neither the proposed rule nor the Final EIS use the term ''serious'' injury when referring to the 180–dB criterion. In response to comment 18 in the proposed rule, NMFS stated that for this proposed action, scientists have determined that a single-ping RL of 180 dB can be considered a scientifically precautionary level to prevent the potential onset of injury to marine mammals. Serious injury is discussed in response to comment 20 in the proposed rule. NMFS stated that because serious injury is unlikely to occur unless a marine mammal is well inside of the 180–dB safety zone and close to the SURTASS LFA sonar source, and because the closer a marine mammal is to the SURTASS LFA source the more likely it is to be detected and transmissions suspended, the potential for serious injury is minimal.

The LOA application was based on the Draft EIS while the proposed rule was based on the Final EIS. For this reason the LOA application is inconsistent with the Final EIS and proposed rule because the terms ''non-serious'' and ''serious'' injury were changed from the Draft EIS to the Final EIS as a result of comments received on the Draft EIS. Also see response to comment 11 in the proposed rule document.

Comment MMIC17: Many scientists believe that LFA sonar is likely to be more harmful than mid-frequency sonar because it covers greater distances and, therefore, exposes more animals and has longer pings.

Response: Comparisons of mid- and low-frequency sonar characteristics do not support this belief. It is true that LF-sonar signals travel farther and usually have longer pulse/ping lengths than MF-sonar signals, under most oceanographic

conditions, which is why the Navy developed the technology. Of importance, however, is the animals' physical susceptibility and behavioral reaction to LF sounds, and that there are far greater numbers of marine mammals sensitive (*i.e.,* auditory—how well they hear) to mid- and high-frequency sound than to LF sound. Most marine mammals hear, vocalize and/or echolocate in the mid- to high-frequency range. In addition, over the past 5 years, the potential effects of LF sonar on marine life has been studied in greater detail than for mid-frequency sonars, meaning there have been more data generated to support the conclusions presented in the Final EIS. NMFS believes that the SURTASS LFA process could be a model of the precautionary approach to introducing novel sound sources into the sea, moving incrementally, conducting research, and developing appropriate mitigation measures.

Comment MMIC18: Because LFA signals are best propagated in the deep sound channel, distant whales are likely to hear the source.

Response: That is a correct statement provided the whales are actually in the deep sound channel and that there is a sufficient amount of SURTASS LFA sonar energy within the channel for the whales to hear. Also, as discussed later in this document, simply hearing the SURTASS LFA signal does not necessarily indicate that a whale has been harassed or ''taken.''

Comment MMIC19: Injury and psychological effects can result in stranding or adverse reaction, such as rapid ascent from depth.

Response: The Final EIS offers detailed analysis and discussion to support the conclusion that, given the employment of SURTASS LFA sonar will occur as proposed in the Final EIS (with geographic restrictions and monitoring/mitigation measures), the potential for injury to any marine mammals is considered negligible. See Subchapter 1.4 and Subchapter 4.2 for more details. Also, despite the fact that the measurement of the potential for psychological effects on marine mammals from underwater sound sources in the field is extremely problematic and expensive to collect, it is not unreasonable to consider that the analysis of the potential for behavioral effects can be used as a benchmark. Thus, the Final EIS concludes that if SURTASS LFA sonar is employed with the proposed geographic restrictions and monitoring/mitigation measures, the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal.

Finally, it seems plausible that marine mammals that have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude ($1{:}10^3$) of dynamic range would be predisposed to have an innately more rugged physiology for handling pressure changes than terrestrial animals (Cudahy and Ellison, 2002). Therefore, no psychological or physiological effects would be anticipated from any rapid ascent from depth.

As mentioned in RTC MMIC15 and later in RTC MMIC27, a review of all SURTASS LFA sonar operations has determined that there have been no strandings associated with SURTASS LFA sonar or any other sonar operating below 450 Hz.

Comment MMIC20: LF sonar disrupts the immune system, nervous system, and other body systems and tissues, and causes psychological problems.

Response: See previous response regarding psychological effects. Also, there is no reason to suspect that an intermittent noise source, such as SURTASS LFA sonar would have impacts on marine mammal immune, nervous or other body systems. If LF sounds were to have system-level impacts, one would presume that such effects would manifest first in those marine mammals inhabiting noisy areas, such as offshore large ports where large vessels (with LF sounds) occur in large numbers, or the Gulf of Mexico, off Newfoundland or in the North Sea where offshore oil and gas seismic activity predominate almost year-round.

Regarding tissue effects, Cudahy and Ellison (2002) indicate that the potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will occur at a damage threshold on the order of 180 to 190 dB. This includes: (1) Transluminal (hydraulic) damage to tissues at intensities on the order of 190 dB or greater; (2) vascular damage thresholds from cavitation at intensities in the 240–dB regime; (3) tissue shear damage at intensities on the order of 190 dB or greater; and (4) tissue damage in air-filled spaces at intensities above 180 dB.

Therefore, unless an animal is within the 180–dB SURTASS LFA sonar mitigation zone, NMFS believes that present scientific information indicates that there should be no physical damage to marine mammal body systems or tissues at an SPL less than 180 dB. Because of the mitigation measures, the potential taking of a marine mammal within the 180–dB mitigation zone is considered minimal. For additional information see Final EIS (RTC 3–2.2, 4–5.14, and 4–6.21).

Comment MMIC21: Injury and aversion could extend to at least the first CZ (33 to 65 km (17.8 to 35.1 nm)).

Response: For discussion on CZs, refer to the discussion earlier in this document (see *Description of Acoustic Propagation*). As discussed in response to earlier comments, unless an animal is within the 180–dB SURTASS LFA sonar mitigation zone, the best scientific information available to NMFS indicates that there should be no physical damage (or injury) to marine mammal body systems or tissues at SPLs below 180 dB. Because the first CZ (as shown in Figure 1) is well beyond the 1-km (0.54 nm) radius of the 180–dB SURTASS LFA mitigation zone, no injury should occur at the first CZ or beyond.

The Navy concluded in the Final EIS analysis that significant changes in biologically important behaviors, which could include aversion, may occur, although effects to marine mammal stocks are considered to be negligible.

Strandings

Comment MMIC22: Because none of the previously identified beaked whales in the Bahamas have been seen since the stranding, they may have all been killed or displaced.

Response: Worldwide, the numbers and behavior of beaked whales are poorly known because the animals tend to be shy and avoid survey vessels. The beaked whale population of the Northeast and Northwest Providence Channels of the Bahamas is known somewhat better than in the rest of the Caribbean because resident biologists have been studying it for some time. While one of these biologists stated that the animals are no longer in the area of the March 2000 stranding event, and NMFS has no reason to doubt this statement, the statement that these whales all died from the sonar is an assertion that is not based on data. These whales could have moved to a different foraging area. Without data, one cannot fairly attribute disappearances to any particular cause. These data would not be difficult to obtain. However, one cannot presume that because one type of sonar is implicated in taking one type of whale, another sonar system will have a similar effect. Therefore, the above comment is noted as a comment ancillary to the action under consideration here.

Comment MMIC23: The Navy stated that because of the offshore nature of SURTASS LFA sonar operations, it does not believe that there is a potential for LFA sonar to result in marine mammal stranding incidents. Is this because the

operations are a long distance from coastlines (and strandings are unlikely to come ashore), or because the LFA sonar will not cause strandings?

Response: NMFS does not consider strandings to occur only when an animal comes ashore. Any marine mammal injured, dead, or dying comes under the NMFS stranding program and is investigated to the fullest extent possible. However, based on the operational parameters of the SURTASS LFA sonar, there is no reason to believe that there is a potential for the SURTASS LFA sonar to cause injuries or strandings. In addition, because of the fact that SURTASS LFA sonar operations will not occur closer than 12 nm (22 km) from any coastline and because the mitigation measures (passive acoustic, visual observations, and a new high frequency sonar designated HF/M3) used will be above 95 percent effective in detecting most marine mammals prior to entry into the 180–dB SURTASS LFA sonar mitigation zone, injury and/or strandings are highly unlikely.

Comment MMIC24a: Active sonar can kill/traumatize whales. Examples are strandings (Greece, Bahamas, 6 additional strandings, etc.). LFA sonar will cause the extinction of beaked whales and the entire world population of marine mammals. The Navy has ignored a number of mass strandings connected with naval maneuvers involving one form or another of active sonar. Discuss the well-documented stranding of four beaked whales on 3 different Caribbean islands on October 1999, which were correlated with loud sounds in the water. The Canadian LFA system (Towed Integrated Active-Passive Sonar (TIAPS)) has been implicated in the stranding of three Blainville's beaked whales in March 1998 at Rum Cay in the Bahamas. The NATO LFA system (Towed Vertically Directive Source (TVDS)) has been implicated in at least two stranding events in the Mediterranean: (1) Thirteen mammals in Kyparissiakos Gulf in Greece on May 12 and 13, 1996 and (2) nine mammals in the western Peloponnesus approaches on October 1997. These strandings demonstrate that whales can be injured by LF sonar. Why was there a failure to consider the strandings that followed NATO use of low-frequency sonar in the Mediterranean in 1996?

Response: Sonars differ in their operating characteristics, and marine mammal species differ greatly in the sounds to which they are susceptible. This is often overlooked by the public. The scientific investigation regarding the Bahamian beaked whale stranding found that the tactical mid-range frequency sonars that were in use aboard U.S. Navy and allied ships during the March 15–16, 2000, Bahamas sonar exercise were the most plausible source of acoustic or impulse trauma to six beaked whales (DOC and SECNAV, 2001). Tissues from these animals are being intensively studied for the mechanism that caused death. DOC and SECNAV (2001) noted, ''SURTASS LFA, another Navy sonar, had no involvement in this event.''

A review of the Smithsonian stranding database shows that there have been seven other instances of beaked whale strandings involving more than one species. One of these activities involved ordnance, two were not identified with military activities, and four were concurrent with military maneuvers (Potter, 2000). Except for the Bahamas stranding, no tissues were collected, and the type of military maneuvers and time and distance separating them from the strandings are not known. Without this information science can never prove whether sonar did or did not cause these deaths. These events point out the pressing need for proper scientific study of marine mammals around many sonar operations, including those of SURTASS LFA sonar.

Investigations indicate that SURTASS LFA sonar has not been known to cause a stranding; and because it uses extensive mitigation measures (passive acoustic, visual observers, and the HF/M3 sonar) that make an injury and therefore a stranding unlikely. No mitigation was used with any of the other events just discussed.

The stranding of Cuvier's beaked whales in the Mediterranean in 1996 was considered in the SURTASS LFA sonar impact analysis. For details, see the Final EIS pages 3.2–45 to 3.2–47.

On October 3, 1999, 4 beaked whales (*Ziphius cavirostris*) stranded in the U.S. Virgin Islands. The Navy had exercises ongoing in the offshore waters and also had live-fire exercises in nearshore waters during the time period when the beaked whales stranded. The offshore exercises, but not inshore exercises involved sonar. Although SURTASS LFA sonar was not involved in these exercises, the Navy has not formally confirmed whether mid-frequency sonars may have caused these four whales to strand in the Caribbean.

Information on the stranding in March 1998 at Rum Cay is provided in the following RTC.

Comment MMIC24b: One commenter stated that TIAPS, the Canadian LFA system, has been implicated in the stranding of three Blainville's beaked whales in March 1998 at Rum Cay in the Bahamas. He also stated that a large balaenopterid (cf. *Balaenoptera physalus*) stranded alive under mysterious circumstances on Eleuthera Island in the Bahamas on March 3, 2000, following a TIAPS exercise in the area on February 2000.

Response: TIAPS is an independent Research and Development project being conducted by the Defense Research and Development Canada, an agency of the Department of National Defense and there is no frequency overlap between TIAPS and SURTASS LFA sonar (TIAPS is approximately 1 kHz). To respond to this comment, the Navy contacted the Project Manager/TIAPS at the Canadian Defense Research Establishment Atlantic. The project manager stated that he cooperated with the commenter and his associates in regard to his investigation of both strandings. Concerning the three beaked whale strandings in March 1998 it is apparent that TIAPS Q244 was completed in Exuma Sound well before the time the whales stranded. NMFS, of course, is interested in receiving any information regarding this stranding for its stranding database.

In regard to the March 2000 stranding of a fin whale, because that stranding occurred 18 days after the TIAPS exercise, there does not appear to be a connection between TIAPS trials and the March 2000 strandings in the Bahamas.

Comment MMIC25: Historical records of beaked whale strandings, compiled by the Smithsonian Institution's Marine Mammal Program in the wake of the Bahamas event, suggest a very high correlation between naval activities and both individual beaked whale strandings and multi-species strandings involving beaked whales. The correlation of all the known mixed species mass strandings involving beaked whales with nearby naval maneuvers (International Whaling Commission (IWC, 2001)) most certainly provides evidence for causation. Further investigations by the Navy into military activities and cetacean stranding is warranted.

Response: As mentioned in RTC MMIC24a, Potter (2000) indicates that there have been seven mixed species mass strandings involving beaked whales. Although four of the seven mixed-species mass strandings are associated in time with some type of military maneuvers, none appears to be related to LF sonar.

Simmonds and Lopez-Jurado (1991) stated that between 1982 and 1989 there were 22 strandings of cetaceans in the Canary Islands, with only three being

related in time to military activity. Simmonds and Lopez-Jurado (1991) reported in their text that ''Local people have only been aware of such military maneuvers three times since 1985; on each occasion mass live strandings have occurred.'' These authors indicate that military maneuvers were documented in 1985, 1988 and 1989. However, they report a mass stranding in the Canary Islands in 1986, and there is no mention of military activity in either their report or the Smithsonian database. Furthermore, there is another mixed species mass stranding involving beaked whales noted in the Smithsonian database that occurred in the Canary Islands in 1987, which is also not associated with military activity. One of the mass strandings, from 1974, had an animal with bullet holes found in the body.

Only one of these seven multiple species strandings is known to have occurred concurrent with naval activities and the use of active mid-frequency sonar, the Bahamas stranding in March 2000. There was a single species, mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf in Greece concurrent with the testing of a NATO sonar, whose lowest frequency is 450 Hz, but which also transmits in the 2.6 kHz to 3.4 kHz range. See the Final EIS Subchapter 3.2.5.1 for a more information on these beaked whale strandings.

Summarizing, the information available on marine mammal strandings is, at best, incomplete and inconsistent. Since NMFS does not know how many sonar operations occurred during this time period without marine mammal injuries or strandings, it believes that the data do not necessarily suggest a high correlation between naval activities and beaked whale strandings, nor do they provide evidence of causation; especially for LF sonar.

However, NMFS has not dismissed this information and will coordinate information contained in the annual LOA report, principally time and location of every SURTASS LFA sonar operation, with stranding data that NMFS receives from its stranding coordinators in order to determine whether any links might exist between them.

Comment MMIC26: Based on calculations of the probability of the number of coincidences between strandings and military activities, under the null hypothesis, it is very unlikely that the stranding events of beaked whales were unrelated to military operations unless military operations are very common.

Response: The commenter's application of a binomial probability experiment methodology to these data may not be statistically appropriate. NMFS notes that the ''rate'' of military activity is undefined and unquantified. Also, the stranding data are most probably skewed, in that the distribution of stranding network effort, and naval activity are both non-random and are most likely correlated, since generally countries with an advanced economy and military can afford stranding network efforts and attract military attention.

Comment MMIC27: Because Dr. Tyack's analysis discussed in Final EIS (RTC 4–4.21) is not presented in detail, the response is ''arbitrary and capricious.'' Provide a comparison of Dr. Tyack's analysis to that of Dr. Whitehead in his May 4, 2001, comments on the proposed rule. One commenter disputes the NMFS statement that ''there is no evidence linking SURTASS LFA sonar transmissions to any stranding events * * *'' because of the beaked whale stranding on the Grecian coast in 1996.

Response: The Grecian stranding in 1996 was not caused by SURTASS LFA sonar because that sonar was not operating in that area. Both the Greek and Bahamas strandings involved beaked whales. These species are mid-frequency specialists. The only common acoustic source to both events was in the mid-frequency range. There were no low frequency sonar sources involved in the Bahamas stranding (DOC and SECNAV, 2001). Therefore, the evidence does not support the LF component as having a causal relationship to the stranding of beaked whales in Greece. Because tissue damage is not expected to occur from sound exposure below SPLs of 180 dB (Cudahy and Ellison, 2002) and the SURTASS LFA sonar operational protocols require shutdown when any marine mammal approaches and before entering the safety (LFA sonar mitigation) zone, the risk of injury to a marine mammal is negligible. It should be noted that there were no mitigation protocols during either the 1996 or 2000 naval operations, although NMFS understands that the Navy has instituted mitigation measures since the March 2000 event to avoid future stranding incidents (DOC and SECNAV, 2001).

Dr. Peter Tyack of the Woods Hole Oceanographic Institution (Woods Hole) attempted to conduct a correlation analysis of marine mammal strandings and past SURTASS LFA sonar operations. There was no evidence of any correlation; thus, no report was generated. The latter analysis in the comment was discussed in the previous RTC in this document.

Comment MMIC28: There is now a weight of evidence (Bahamas stranding event) that beaked whales are at far greater risk from these operations (naval sonar operations) than the four species of mysticetes studied in the LFS SRP; thus, the commenters suggest that NMFS should revise its ''negligible impact determination'' accordingly.

Response: The Navy's LFS SRP was designed to study those marine mammals most susceptible to LF sound, sperm and large baleen whales. Beaked whales are mid-frequency specialists, not LF specialists, which was the reason for not including them in the LFS SRP. Moreover, because of their unknown habitats and rare sightings, there is great difficulty in attempting to study these species (see RTC MMIC22). Results from the interim report on the Bahamas strandings (DoC and SECNAV, 2001) cannot be extrapolated to estimate potential risk to these animals from SURTASS LFA sonar because of the differences in frequency regimes (100–500 Hz vs. 3,000–4,000 Hz). Furthermore, as mentioned previously, DOC and SECNAV (2001) state, ''SURTASS LFA, another Navy sonar, had no involvement in this (beaked whale stranding) event.'' However, on July 25, 2001, NMFS issued a modification to a scientific research permit held by Dr. Peter Tyack to undertake studies on beaked whales. In addition, NMFS is recommending research on beaked whales be funded under the SURTASS LFA long-term monitoring (LTM) program.

In the interim, because NMFS does not expect tissue damage to occur from sound exposure below SPLs of 180 dB and because of the high detection rate of the HF/M3 sonar and other monitoring requirements ensuring SURTASS LFA sonar shutdown when any marine mammal (including any beaked whales) approaches or enters the 180–dB LFA mitigation zone, the risk of injury to a marine mammal is near zero. Moreover, the monitoring and mitigation protocols proposed for employment of SURTASS LFA will preclude employment in narrow and deep channels surrounded by land such as those in the Bahamas (22-km/12-nm restriction).

Regarding its negligible impact determination, until scientific evidence is forthcoming on stock discreteness of the Bahamian population of beaked whales, NMFS must conclude that, while locally significant, it is highly unlikely that stock or species level impacts occurred to the beaked whales as a result of the Bahamas incident.

Similarly, it is unlikely that SURTASS LFA sonar operations (which would not operate in areas similar to the Bahamas incident) would cause stock level impacts. Therefore, as indicated later in this document, NMFS believes that SURTASS LFA sonar operations are unlikely to have more than a negligible impact on affected species or stocks of marine mammals.

Comment MMIC29: There is no evidence to support the Navy's position in the Final EIS that the difference in frequency of the sonar in the Bahamas stranding event makes LFA particularly safe or that beaked whales are the only species vulnerable to strandings. The Bahamas incident demonstrates that such impacts are possible and are of concern for LFA sonar.

Response: Please see previous RTCs regarding the potential for strandings to be caused by SURTASS LFA sonar.

Comment MMIC30: NMFS should await the final report on the Bahamas stranding investigation before issuing a small take permit to the Navy.

Response: The interim report on the Bahamas stranding event was released to the public in December 2001 (DOC and SECNAV, 2001). The final report will not be completed until final necropsy analyses have been completed. However, because the analyses regarding the cause of the beaked whale stranding event needed by NMFS to make its determinations on the Navy's small take application are in the interim report, NMFS does not need to delay decision-making until the final report is completed and released to the public.

Comment MMIC31: One commenter stated, ''* * * in the Navy's treatment of the Bahamas strandings (Final EIS at 3.2–47), where it suggested that the lack of observed strandings during the LFS SRP rules out any conclusion that might be made about potential impacts on the basis of that incident (and subsequent investigations).''

Response: There is no discussion in the Final EIS or in TR 1 of the lack of strandings during the LFS SRP. What was stated was that there is no evidence that beaked whales are more sensitive to LF sound than the baleen whales studied during the LFS SRP. However, as noted by the commenter, there was a ''lack of observed strandings'' during all three phases of the LFS SRP. For additional information on events potentially related to LFS SRP Phase III, see the Final EIS (RTC 4–5.25). The Navy did not, as suggested by the commenter, use this lack of strandings as proof of absence of harm.

Comment MMIC32: Was the Bahamas stranding the results of the Navy's testing of super-cavitation torpedoes?

Response: It was not. Readers interested in super-cavitation torpedoes are directed to Ashley. 2001. Scientific American 285(5).

Resonance

Comment MMIC33: Resonance effects in air/gas cavities or spaces can cause injury (tissue damage) or mortality to marine mammals, such as the Greece and Bahamas beaked whale strandings. Air space resonance produced by LFA sonar could cause tissue damage to the lungs of many cetaceans and can inflict injury at frequencies to which creatures are not acoustically sensitive. The resonance would be substantially larger than the displacement associated with mid-frequency sonar. Can the LFA source stimulate resonance sufficient to cause injury to marine mammals? Ten seconds could be enough to induce resonance. Most underwater acousticians would have considered the tactical sonar to be less likely than LFA sonar to cause the bubble resonance phenomena due to the relatively short duration and high sweep rates typical of tactical sonar compared to LFA. One organization received 18 comments on resonance applicability to LFA.

Response: The concept that resonance will increase stress on tissue to the point of damage is in reality two separate concepts: resonance and tissue damage. Cudahy and Ellison (2002) state that resonance does not equal damage and damage is not always linked to resonance. So the issue is not resonance in air/gas cavities, but tissue damage, whether it is caused by resonance or by other means. As discussed in detail under RTC MMIC20, the potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will not occur at a level less than 180 to 190 dB (Cudahy and Ellison, 2002). Please refer to RTC MMIC20 for more information.

Therefore, unless an animal is within the 180-dB SURTASS LFA sonar mitigation zone, there should be no physical damage to body systems or tissues. Because of the mitigation measures, the potential impact to any marine mammal stock from injury is considered negligible. Whether or not SURTASS LFA sonar is more or less likely than a mid-frequency, shorter pulse, sonar to cause resonance is not relevant to the impact analysis in this case because marine mammals are very unlikely to be exposed to injurious levels (above 180 dB RL). Likewise, whether or not 10 seconds could be enough to produce resonance is also not relevant in this case for the same reason.

Comment MMIC34: More studies are required on lung volume resonance in marine mammals which require more detailed studies to model lung responses over a range of volumes and diving depths. The Navy has the capability and resources to conduct a thorough review and modeling of all this data, including, for example, full finite element analysis of the ears and air spaces of the Cetacea and other marine mammals to LFA sonar sounds to access the potential for tissue damage, hearing loss, and death. It is unclear what frequency ranges cause resonance in each species and over what dive depths. Calculated resonance frequencies for marine animals fall within the LFA frequency range. Cranial air space resonance of beaked whales is known to be about the center frequency of LFA, so resonance should be expected. One commenter listed several anatomical considerations concerning airspaces that may be vulnerable to LFA-frequency-induced resonance. These included the lungs and others, such as sinuses. Calculations show that resonance would occur in a bottlenose dolphin lung at 100 Hz at 34 m (111.5 ft) depth to 500 Hz at 500 m (1640 ft) depth and a beaked whale at 100 Hz at 151 m (495 ft) depth to 500 Hz at 1,042 m (3419 ft) depth.

Response: There is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. For example, marine mammal lungs are reinforced with more extensive connective tissues than their terrestrial relatives. These extensive connective tissues, combined with the probable collapse of the alveoli at the depths at which significant SURTASS LFA signals can be heard, make it very unlikely that significant lung resonance effects could be realized. Alveolar collapse is not the only change in the lungs. The trachea can also collapse because cartilage armor rings are often incomplete. Air that does not escape the alveoli is quickly absorbed during diving due to the high partial pressure of the gas (Berta and Sumich, 1999). Complete lung collapse occurs at depths of 25 to 50 m (82 to 164 ft) for Weddell seals (Falke et al., 1985), 75 m (246 ft) for the bottlenose dolphin (Ridgway and Howard, 1979), and probably occurs in the first 50 to 100 m (164 to 328 ft) for most marine mammals (Berta and Sumich, 1999). Also as determined by Cudahy and Ellison (2002), tissue damage is not expected to occur in marine mammals below 180 dB RL.

Based on these reasons, NMFS does not believe that additional research is necessary on the potential for resonance effects in marine mammals due to LF sound prior to SURTASS LFA sonar

operations being authorized to incidentally harass marine mammals, but such research should occur simultaneously with SURTASS LFA sonar operations (i.e., small take authorization holders are required through statements by Congress to conduct appropriate research to address impacts and ways to mitigate those impacts). Moreover, NMFS understands that such research is already underway (e.g., finite element modeling is being conducted on beaked whale skulls collected at the 2000 Bahamas stranding, and studies of tissue and air-space resonance in the head are being conducted by two independent research teams) and additional research may be conducted by the Navy, the National Science Foundation or the National Institutes of Health in the future.

Comment MMIC35: One commenter submitted a paper titled ''Air-space Resonance and Other Mechanisms Which May Cause Tissue Damage in Cetaceans'' as an attachment to his comments. This paper postulates that: (1) Air space resonance could cause damage to some of the large sinus cavities of cetaceans and that LFA sonar could cause lung damage due to resonance, (2) LFA sonar could cause resonance in the lungs and sinuses and a resonance at the same frequency of the tympanic bone of the middle ear, (3) LFA sonar could induce panic and subsequent problems with equalization, (4) LFA sonar could possibly cause bubble growth in blood vessels, and (5) LFA sonar signals are of long enough duration to cause resonance.

Response: Resonance does occur in natural systems. However, an analysis subsequent to the Final EIS by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury does not support the conclusions in the commenter's paper. The issue is not resonance, but tissue damage. The potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will occur at a damage threshold on the order of 180 to 190 dB (Cudahy and Ellison, 2002) (see RTC MMIC20). The maximum SPL of 160 dB proposed by the commenter is based on a degree of tuning, or Q value, of 10. (**Note:** The Q of a system denotes how sharply the system responds at resonance). In other words, Q designates how much higher a system's resonance frequency response is compared to its response at non-resonance frequencies. If Q is high, the peak in frequency response is high; whereas, if Q is small, the frequency response peak is shallow (Prout and Bienvenue, 1990). Critical issues to consider in examining resonance effects are the tuning of the resonance and the damping due to contiguous body structures. The Q value that has been measured *in vivo* in the lungs (of pigs and humans) is a Q from 3 to 5 (Martin *et al.*, 2000). There are no data to support the use of a Q value of 10 as a good estimate of the degree of tuning in cetacean air-filled spaces. In general, the internal organs of mammals are very highly damped. Examining fishes, extensive measurements of the Q of swim bladders at resonance (covering a wide range of species and sizes) support an *in vivo* range of Q from 1.0 to 6.1 (Love, 1978). Thus, an educated estimate of the Q for other gas-filled structures, which are much less free to move than the lung, would generally be very small, even less than the ($1<Q<6$) range encompassing both lung and fish swim bladder measured results (Cudahy and Ellison, 2002). Therefore, resonance calculations based on a Q value of 10 are incorrect.

For reasons mentioned in RTC MMIC34, there is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. Please refer to that RTC for further response. In addition, the nasal air sacs are too small to be relevant to LFA transmissions. Furthermore, these nasal diverticuli are clearly involved in sound production (Heyning and Mead, 1990). The pressure fluctuations that accompany the emission of echolocation clicks or communicative sounds must be substantial, so these tissues should also be relatively resistant to damage from external sound sources.

It is likely that marine mammals, which have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude ($1{:}10^3$), would be pre-disposed to have an innately rugged physiology for handling pressure changes. Therefore, it is unlikely that they would experience equalization problems. Crum and Mao (1996) stated, ''For SPL's below about 190 dB, however, except under relatively extreme conditions of supersaturation, significant bubble growth is unexpected.'' This is covered in the Final EIS RTC 4–9.4.

In summary, resonance can occur in marine animals, but this resonance does not necessarily lead to injury. Scientific data noted above demonstrate that in order for LF sound to cause injury, the SPL must be above 180 dB. Due to the 180–dB SURTASS LFA sonar safety zone and the additional 1-km buffer zone, the probability of any marine mammal being exposed to received levels at or above 180 dB, with or without resonance, approaches zero. Therefore, the above evidence does not support the claims by the commenter that LFA sonar signals will cause air space resonance, tissue damage or injury to marine mammals.

Comment MMIC36: One commenter stated, ''We would like to have had the time to see if there are co-resonances, in which, for example, a lung at resonance becomes a sound source of its own. If the Q of the system is 10, then the re-radiation of the lung is actually $10 \times$ the incoming sound pressure that sent it into resonance. Therefore, the lung becomes an acoustic amplifier. Then, in calculating the effects of LFAS, one must consider any resonant cavity to be a sound source LOUDER than the original LFAS signal, just multiply by Q.''

Response: From a purely physiological standpoint, it could be hypothesized that the lung could possibly become an acoustic amplifier. However, there are no data to support a Q of 10 as a good estimate of the degree of tuning in an air-filled space; and in general, the internal organs of mammals are highly damped (Cudahy and Ellison, 2002). These authors cite data for a range of Q from 1 to 6 encompassing both lungs and fish swimbladders. Further, human and pig data collected *in vivo* indicate that at the resonant frequency of the lung, tissue damage occurs above 180 dB SPL (see TR 3 and Cudahy and Ellison, 2002). Since the data were collected at resonance, any amplification would have been included in the response of the lung to the sound, regardless of the Q value.

Comment MMIC37: The Final EIS analysis did not consider Minnaet's and Andreeva/Barham's equations that relate bubble size to resonance frequency and show that there are air cavity volumes of all sizes that may resonate in marine animals.

Response: The consideration of Minnaet's and Andreeva/Barham's equations relating to resonance are not relevant to the analysis in the Final EIS because the best supportive evidence as documented indicates that below 180 dB RL SURTASS LFA signals would not cause injury. For additional information, see the Final EIS Subchapter 1.4.2 and RTC MMIC35. Because of mitigation protocols, the probability of a marine mammal being undetected within the 180–dB SURTASS LFA mitigation zone during transmission approaches zero. The subsequent analysis, mentioned previously, by Cudahy and Ellison (2002) on the potential for resonance from LFA signals to cause injury supports this conclusion.

Comment MMIC38: One commenter stated, ''Further, not all marine life

damage can be attributed to air cavity resonance alone. Damage to hearing apparatus of marine mammals such as uncovered by Dr. Darlene Ketten from Woods Hole illustrates my point. The entry to the brain and on to the hearing apparatus was through a nerve foramen from a sinus cavity. The air cavity of the sinus will not vibrate as a bubble because the bony sinus cavity presents a different acoustical impedance to the sonar. The whole of the lung/bronchial tubes/trachea/sinus/air-volume complex must be considered. Modeling of this complex air volume may be possible by considering the lung to vibrate like a bubble and the remaining part act as a Helmholtz resonator. A coupled resonant system such as this can explain the punch through at the nerve foramen site which is soft compared to the bony sinus cavity thus concentrating the displacement on the soft foramen site into the brain where Ketten observed the bloody mass and hearing apparatus trauma.''

Response: This comment is an untested hypothesis presented as to a possible coupled resonance mechanism for the injury to the Blainville's beaked whale that stranded during the Bahamas standing event in March 2000. As noted in DOC/SECNAV (2001), the necropsy found a unilateral temporal subarachnoid hemorrhage with blood clots bilaterally in the lateral ventricles. In simpler terms, there was a blood trail in at least one animal that could be traced to a hemorrhage in a discrete region of a fluid space around the temporal regions and within the ventricle of the brain. There was no conclusion drawn by the interim report stating that this was, or could have been, caused by coupled resonance causing the ''punch through'' at the nerve foramen site into the brain. In fact the report stated, ''The actual mechanisms by which these sonar sounds could have caused animals to strand, or their tissues to be damaged, have not yet been revealed, but research is underway.''

The commenter discusses the lungs/bronchial tubes/trachea/sinus (air sac) complex. He also comments upon the sinuses surrounding the middle ear. The tympano-periotic structure has a neural connection to the brain, and it was along this neural pathway that he stated Dr. Ketten reported damage in the Bahamas stranding animals. However, there is no connection between the respiratory and auditory systems. Any resonance that may occur in the respiratory system has no physical connection to the bulla and brain. In fact, the bulla appears to be acoustically isolated by ligaments and the peri-tympanic sinuses to prevent any bony sound conduction to the ear (Ketten, 1997), emphasizing the auditory pathway from the pan bone in the lower jaw. Therefore, the connection between any possible resonance (coupled or not) in the respiratory system and the bulla/brain is unlikely.

Finally, the SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound, including resonance effects, is on the order of 180 to 190 dB (Cudahy and Ellison, 2002). In conclusion, the above hypothesis does not appear to be valid.

Additional Marine Mammal Impact Concerns

Comment MMIC39: Can LFA reduce the resolution power (capability) of echo-locating by marine mammals? For example, will a dolphin's ability to distinguish heads from tails on a coin be affected?

Response: No. Dolphin echolocation utilizes high frequency sound and SURTASS LFA sonar is low frequency. Therefore, SURTASS LFA sonar will not affect the resolution capability of echo-locating marine mammals.

Comment MMIC40a: One organization believes that potential non-detectable and unmonitored effects of SURTASS LFA sonar include increases in miscarriage rates, increased vulnerability to other anthropogenic threats (such as entanglement in fishing gear or susceptibility to ship strikes), decreases in feeding rate, changes in lactation rates, increased stress, changes in navigational abilities, potential hearing loss, etc. Even the Navy concedes that incidental takes consisting of short-term behavioral modifications will occur outside the 180–dB isopleth. Since these effects are typically undetectable, it will be impossible to assess or monitor these effects. As a result, the commenter does not believe that NMFS can make a finding of negligible impact.

Response: This comment combines impacts that could potentially occur due to an injury to hearing and those that are short-term behavioral effects due to the SURTASS LFA sonar sounds. In order for injury-related effects to potentially occur, the HF/M3 sonar would need to be ineffective at locating marine mammals. This, as noted elsewhere in this document is unlikely (see Mitigation Concerns). Moreover, in order for a marine mammal to be injured, the HF/M3 sonar would need to have missed the animal through the several acoustic sweeps that it would make prior to the animal getting close enough to the projectors to be injured. Potential behavioral effects, which are the principal means of taking being authorized by this action, have been discussed throughout this document and the Navy's Final EIS. NMFS' determination of negligible impact is discussed later in this document.

Comment MMIC40b: There is no way to know what becomes of stressed or confused animals in offshore waters due to noise pollution. The cause of entanglements, ship collisions, and other such incidents cannot be predicted or recognized.

Response: There is no scientific information to support a hypothesis that sound from SURTASS LFA sonar will increase stress or confusion in marine mammals. Because of the relatively short duty cycle, the water depth of the CZ ray path, the movement of marine mammals in relationship to the SURTASS LFA sonar ship, and the effectiveness of the tripartite mitigation program, few marine mammals are likely to be affected. In order to receive more than one ''ping,'' during a normal 8-hr vessel leg, an animal would need to match the ship in speed and course direction between pings. Also, entanglement in fishing gear, collisions with ships, or strandings appear to result from vestibular effects to the inner ear associated with explosives or being very close to a loud, underwater noise. However, while there is no indication that this would result from being within the 180 dB safety zone for SURTASS LFA sonar, in the effects analysis of the Final EIS, the Navy presumes that 100 percent of the marine mammals within the 180 dB zone would receive an injury even though animals may not actually be injured.

Comment MMIC41: The assumption in the Final EIS analysis that animals are only subject to acoustic stress during LFAS operations is not correct. An animal knowing that the presence of the SURTASS LFA vessel indicates a periodic, unpredictable, annoying noise source, which interferes with their behavior, causes stress.

Response: This assumption presumes that marine mammals will associate a visual cue (the SURTASS LFA sonar vessel) with a noise (presumably an annoying noise). This is unlikely unless the marine mammal can associate a cause and effect between the two cues based on earlier experience. Although this has been known to occur in certain situations (*e.g.,* the eastern tropical Pacific yellowfin tuna purse seine fishery), the short mission length and the likelihood of subsequent encounters make this scenario unlikely in the case of SURTASS LFA sonar. In addition, the results of the LFS SRP did not detect any prolonged behavioral responses

after the cessation of transmissions or any behavioral responses to the mere presence of the *R/V Cory Chouest.*

Comment MMIC42: One commenter stated, ''Observations of sea otters made near the playback site during LFS SRP tests off California in January, 1998 found that sea otter foraging success was reduced by 11 percent and dive time increased by 11 perecent when LFA sound source was on (Quicklook, Phase II). This decrease in food-getting efficiency and increase in dive time could have biologically significant effects on a population.''

Response: The commenter's quote is incomplete. Benech (1998) summarizes observations of sea otters made near the playback site during January 1998. The following is a quote from her conclusions as presented in the Quicklook Report of Phase II and in TR 1:

> Sea otter densities, foraging behavior, and activity patterns remained normal through the course of the acoustic testing period. The only possible atypical behavior that was linked to the offshore acoustic tests was that of forage dive duration and success. The [foraging] success rate was reduced by 11% and dive time increased by a similar amount when all dives during acoustic testing were pooled. Success did not diminish with increasing [sound] duration or [source level] decibels. This difference in forage diving success, although detectable, was not statistically significant within a 95% level of confidence, however there is at least an 80% probability that this reduction in success was not a random event.

It must be noted that these conclusions are based on only two sightings: On January 14, 1998 and January 22, 1998. The sightings were near the playback site(s), which were between 2 and 4 km (1.1 and 2.2 nm) offshore. During regular SURTASS LFA sonar operations, the vessel will be outside of 12 nm (22 km) from the shore. Therefore, based on the statement by the investigator that the sea otter densities, foraging behavior, and activity patterns remained normal through the course of the acoustic testing period, and that the difference in forage diving success, although detectable, was not statistically significant, and based on the coastal nature of sea otters, there is a minimal chance of any biologically significant effects on the sea otter population.

Comment MMIC43: NMFS and the Navy have not conducted studies as to the potential impacts of SURTASS LFA sonar on pinnipeds, dolphins, other toothed whale, sea otters, fish, cephalopods, and other vulnerable marine species.

Response: As stated in the Draft and Final EISs, studies were conducted on the four species of large whales to serve as indicators for species considered to be equally or less sensitive to LF sound, which included pinnipeds and odontocetes. Sea otters were studied during the LFS SRP Phase II as discussed previously. For additional details, see Final EIS RTC 4–5.2. There are discussions and analyses of potential impacts on fish, sharks and sea turtles in the Final EIS in Subchapters 3.2.1.2, 3.2.2, 3.2.3, 4.1.1, 4.1.2, and 4.3.1. Cephalopods were eliminated because of poor sensitivity to LF sound, with hearing thresholds in the LF range estimated to be 146 to 150 dB. For additional information, see Subchapter 3.2.1.1 in the Draft and Final EISs.

Comment MMIC44: One commenter believes that new empirical experiments must be done to assess the implications for the oceans as a whole and the creatures that live in them, and the effects on the ecosystem performance, productivity, biodiversity, extinction rates, and numerous other factors. New data yet to be addressed by the Navy and NMFS includes: self-awareness of cetacea; cultural transmission; language and communications skills; tool use; lifespan of some 200 years; ability to heal human diseases and conditions; increased brain size, increased IQ, more intelligent than humans, brain more evolved than humans; and cetacea are a sovereign people/nation. The permit application must be rejected pending proper analysis and research incorporating new data showing clearly that LFAS is safe for our planet.

Response: The information provided by the commenter that is relevant to the Navy's responsibility under the National Environmental Policy Act (NEPA) and/or NMFS' responsibility under the MMPA has been addressed in the appropriate documents prepared under these statutes. Other issues have not been addressed because they are outside the scope of the analyses required by statute, and NMFS and the Navy do not believe SURTASS LFA sonar will affect those aspects of marine mammal evolution, behavior or social organization identified by the commenter.

Scientific Information Concerns (SIC)

Data Gaps

Comment SIC1: Science cannot provide adequate data to determine the specific characteristics or level of anthropogenic noise that will cause biologically significant impacts. Data gaps/unknown information: (1) Hearing thresholds, (2) injury thresholds, (3) resonance frequencies and levels for injury, (4) short-term impacts, (5) long-term impacts, (6) cumulative effects, (7) how sound affects marine animals, (8) how whales communicate, (9) abundance and distribution of species and stocks, and (10) reproduction and survival rates.

Response: For the SURTASS LFA sonar NEPA analysis, the best available scientific information has been used. Data gaps/unknown information are discussed in the Final EIS (RTCs 1–3.6, 2–3.4, 2–3.7, 2–4.2, 3–8.1, 3–8.3, and 4–4.1). In the Final EIS Subchapter 1.4.2, the Navy discusses scientific data gaps regarding the potential for effects of LF sound on marine life. While recognizing that not all of the questions on the potential for LF sound to affect marine life are answered, and may not be answered in the foreseeable future, the Navy has combined scientific methodology with a conservative approach throughout the Final EIS to protect the marine environment. The Final EIS was developed based on the guidance for how to proceed under situations with incomplete or unavailable information as provided in CEQ NEPA regulations (40 CFR 1502.22). Incomplete and unavailable information were identified and key data gaps were filled through research. The Navy's LFS SRP studies filled in data gaps on the potential effects of LF sound on marine life, and the ongoing monitoring and research programs instituted by the Navy will continue to reduce areas of incomplete information and provide invaluable data that are presently unavailable.

Comment SIC2: One commenter stated that the Navy simply lacks sufficient scientific data to draw any firm conclusions, so it relies upon assumptions and guesses. The example cited was that ''although there is no direct data on auditory thresholds for any mysticete species anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing.'' Therefore the precautionary approach should be followed. Making assumptions based on incomplete data is not precautionary.

Response: The Navy approach was conservative, in that, with the lack of physical data on the hearing thresholds of mysticete whales, it was assumed that they were sensitive to LF sounds and evaluated as such. The same assumption was made for all potentially affected marine mammals, regardless of their sensitivity to LF sound. For a more detailed discussion on the conservative procedures and assumptions in the research and modeling, see Final EIS Subchapter 1.4.3.

NMFS believes that the SURTASS LFA process could be a model of the

precautionary approach to introducing novel sound sources into the sea, moving incrementally, conducting and continuing research, developing appropriate mitigation measures, and monitoring impacts to test the validity of both the model and the assumptions.

Comment SIC3: Species most likely to be affected are pelagic cetaceans, yet there are no reasonable audiograms for these species. There is a lack of information on beaked whales. If acoustic sensitivity is unknown, it is impossible to estimate the potential for injury impacts to stocks.

Response: While it is true that there are no audiograms for large cetaceans and a general lack of data on beaked whales and other pelagic species, that does not mean that estimates of the potential impacts under NEPA and MMPA cannot be performed. CEQ's NEPA regulations (40 CFR 1502.22) provide guidance for how to proceed under situations with incomplete or unavailable information. The auditory thresholds utilized in the analysis were based on the best available information. Figure 1–4 in the Final EIS illustrates the assumption that mysticetes have the best LF hearing of all marine mammals. To further ensure the validity of the estimates, the analysis relied on conservative procedures and assumptions in research and modeling as detailed in the Final EIS Subchapter 1.4.3.

LFS SRP

Comment SIC4: The information provided on the LFS SRP often is not sufficient for the reader to understand or judge the merits of Navy and NMFS conclusions based on their results. The Final EIS describes on pages 4.2–26 to 4.2–29 previous studies that suggest significant behavioral responses to underwater sounds. The Final EIS seems to ignore that evidence in forming its conclusions about potential behavioral effects. For example the Final EIS includes: (1) A summary statement by Richardson *et al.* (1995) that indicates that marine mammals may have a limited tolerance for continuous underwater sound levels at or above 120 dB, (2) a description of significant gray whale responses to continuous sounds about 120 dB, (3) a description of behavioral responses of belugas to icebreaker noise at 27 nm (50 km), and (4) a description of avoidance responses of bowhead whales to drill ship noise at RLs of 110 to 132 dB. Therefore, those data, combined with the LFS SRP, demonstrate some potential for significant behavioral responses of marine mammals to LF sound. Available information on the LFS SRP is not sufficient to assess the significance of these changes and more investigations are required.

Response: The specific studies referenced in the Final EIS on pages 4.2–26 to 4.2–29 were not ignored. In fact, Malme *et al.* (1983, 1984) demonstrated that gray whales exhibited statistically significant responses to four different playbacks typical of industrial noise from oil production (drillship, semisubmersible, drilling platform, and production platform) at RLs of approximately 120 dB. This study was replicated in Phase II of the LFS SRP using SURTASS LFA sonar stimuli. However, the Phase II research demonstrated that it may be invalid to apply the inshore (2 km (1.1 nm) from shore) response model (when 50 percent of the whales avoided SURTASS LFA sonar stimuli at RL of 141 ±3 dB) to sources that are farther offshore (4 km (2.2 nm)). With the source level of the offshore source adjusted so that the whales' received level was 140 dB (same as when the source was inshore within the migration corridor), the whales did not alter their migration paths. For additional information see the Final EIS page 4.2–26. For the SURTASS LFA sonar, the offshore model is more appropriate because the SURTASS LFA vessel will not operate within 12 nm (22 km) of the coast.

The other two studies referenced discussed the reactions of two arctic species (bowheads and belugas) in response to noise from icebreakers. Bowheads and belugas inhabit waters frequented by ice and may require a low ambient noise level in order to navigate successfully through the ice, to locate leads and polynyas, and avoid ice keels. SURTASS LFA sonar is not authorized to take marine mammals in this type of environment. Please refer to RTC MMIC3 for more information on beluga whales.

The commenter's statement that Richardson *et al.* (1995), ''indicates that marine mammals may have a limited tolerance for continuous underwater sound levels at or above 120 dB'' was taken out of context. It was precisely this premise that the LFS SRP was designed to test for LF sonar signals. The Final EIS Subchapter 4.2.4.1 page 4.2–26 actually states: ''Prior to the LFS SRP, the best information regarding whale responses to continuous, LF, anthropogenic noise was summarized by Richardson *et al.* (1995b): ''Some marine mammals tolerate, at least for a few hours, continuous sound at received levels above 120 dB re 1 μPa. However, others exhibit avoidance when the noise level reaches ~120 dB * * *. It is doubtful that many marine mammals would remain for long in areas where received levels of continuous underwater noise are 140+ dB at frequencies to which the animals are most sensitive.''

On page 4.2–29 the Final EIS concluded:

In summary, the scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. Taken together, the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to RLs near 140 dB would exhibit significant disturbance of behavior and avoid the area. These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. The LFS SRP results cannot, however, be used to prove that there is zero risk at these levels. Accordingly, the risk continuum presented below assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, the AIM simulation results indicate that a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (see Appendix D and Figures 1–5a through 1–5c).

NMFS concurs with the Navy that sufficient information was provided on the LFS SRP in the Final EIS and TR 1, which was incorporated by reference into the Final EIS in accordance with 40 CFR 1500.21. TR 1 was available to the public upon request.

Comment SIC5: The Final EIS states that ''* * * SRP selected the most plausible and likely impacts to address, in particular, significant change in a biologically important behavior. They observed none * * *. Other less plausible and unlikely effects were not addressed.'' According to the LFS SRP there were biologically significant behaviors.

Response: NMFS and the Navy do not agree that there were biologically significant behavioral changes during the LFS SRP. The independent scientists who designed and conducted the LFS SRP determined that these experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses (Final EIS at page 4.2–29). See RTC MMIC10 for further discussion.

Comment SIC6: The LFS SRP was insufficient because only 4 baleen whales were studied. A limited study of four species of whales could not provide a basis for conclusions about impacts of LFA on all marine mammals. Species studied were not representative species, for example the gray whale is inshore and LFA will operate offshore in pelagic waters. The information collected to date is not representative of the effects of LFS on all cetaceans. Marine mammals have at least four basic types of ears; therefore, the Navy cannot lump all whales into the same category (baleens).

Response: It is impossible to conduct studies of all marine mammal species within a reasonable period of time. Accordingly, four mysticete species (blue, fin, gray, and humpback whales) were selected because: (1) They are considered most likely among all marine mammals to have the best hearing in the SURTASS LFA sonar frequency band (i.e., they would be the most likely species affected if there was an impact from LFA sonar), (2) most have protected status under the ESA, and (3) there is prior evidence of some avoidance responses to LF sounds. Their responses to LF sound signals during the LFS SRP were to serve as indicators for the responses of other potentially LF-sensitive species, which were presumed to be less vulnerable to SURTASS LFA sonar signals. Whether or not the gray whale is an inshore or pelagic animal is not germane to whether it is a representative species for the LFS SRP. It is representative because it met the three criteria for selection listed above.

The Navy's analysis did not ''lump'' all whales into the same category. The rationale for using representative species to study the potential effects of LF sound on marine animals emerged from an extensive review in several workshops by a broad group of interested parties: academic scientists, federal regulators, and representatives of environmental and animal welfare groups. The outcome of these discussions concluded that baleen whales (mysticetes) would be the focus of the three phases of the LFS SRP and indicator species for other marine mammals in the analysis of underwater acoustic impacts because they met the selection criteria. Because the results were then utilized in the impact analysis of less LF-sensitive marine mammals, NMFS believes the approach was conservative and scientifically sound, and the potential impacts to odontocetes and pinnipeds were overestimated, not underestimated. For additional information, see the Final EIS (RTCs 4–5.1 and 4–5.2).

Comment SIC7: The LFS SRP was insufficient because it remains to be proven whether it is something about the inshore environment that causes whales to show a greater reaction to noise, or something about the composition of whales that migrate inshore.

Response: While the results from such research would be informative, it would not be relevant to the deployment of the SURTASS LFA sonar because SURTASS LFA sonar will not operate inside of 12 nm (22 km) of any coastline.

Comment SIC8: The LFS SRP was insufficient because it did not study: (1) The species most likely to be affected (commenter did not state what species to which he was referring), (2) sperm and beaked whales, and (3) dolphins that can make LF sounds.

Response: Recognizing that it would not be possible to conduct studies of all marine mammal species within a reasonable period of time, the LFS SRP was designed to study the marine mammal species considered to be the most sensitive to LF sound, the baleen whales. Phase III was designed to allow playback experiments with sperm whales, but no animals were encountered before or during the offshore portions of the cruise schedule. Beaked whales and dolphins were not considered for the LFS SRP because: (1) They are believed to be more sensitive to mid- and high-frequency sound, rather than LF sound, like SURTASS LFA sonar; and (2) they are not listed as threatened or endangered under the ESA, thereby not meeting the selection criteria described in RTC SIC6. However, research on additional marine mammal species will be undertaken in the near future as explained in RTC MOC25 in this document.

Comment SIC9: The LFS SRP was insufficient because research was not conducted at power levels of actual operations. Animals not subjected to 180–dB RL.

Response: NMFS and the Navy do not believe it desirable nor necessary for this action, let alone humane, to test animals at or above levels that might result in injury simply to develop an injury risk continuum (at or above 180 dB). All marine mammals exposed to RL at or above 180 dB are considered for the analysis and for monitoring/reporting purposes to be injured and activities are mitigated to protect marine mammals at that level.

As noted in the Final EIS (RTC 4–5.21), in some of the LFS SRP Phase I experiments (studying the responses of feeding blue and fin whales), the SURTASS LFA source was transmitting at operational power levels. Even under these circumstances very few animals were exposed at received levels as high as 155 dB. The research was specifically designed so as NOT to expose animals to higher received levels. These research results confirmed what is predicted from the AIM that a very small percentage of animals will be close enough to the SURTASS LFA sonar to experience levels above 155 dB. See the Final EIS Figures 1–5a through 5c, Subchapter 4.2.4.3 and Appendix D. The Navy has stated that it would not seek a scientific research permit to perform field tests at higher RLs to animals in the wild. Moreover, injury cannot be studied in the wild. Any such experiments should be undertaken under controlled laboratory conditions, with animals in a more controlled setting. Finally, the Navy believes it has adequate data to assess what the potential for impacts would be for RLs greater than 180 dB RL for the LF sounds from SURTASS LFA sonar, without the need to try to actually expose animals to that RL.

Comment SIC10: The LFS SRP was insufficient because sound levels utilized were only 120 to 150 dB, far lower than the 180 dB deemed acceptable by the Navy. The LFS SRP did not assess potential behavioral responses to signals in the range of 150 or 155 to 180 dB. One cannot extrapolate results above 155 dB. Seventy percent of humpback whales stopped singing at 140 dB; blue whales stopped vocalizing and many stopped feeding; gray whales altered their migration routes. Why are these behavioral effects not considered ''significant''?

Response: The scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. Study results in TR 1 indicate that 6 cases of humpback song cessation were considered possible responses to SURTASS LFA sonar transmissions. However, the estimated maximum RLs for these animals were 121.5 dB, 123 dB, 129 dB, 133 dB, 145 dB and 150.5 dB (not 70 percent at 140 dB as the commenter states). The fact that none of the LFS SRP observations revealed a significant change in a biologically

important behavior helped determine an upper bound for risk. The LFS SRP results cannot, however, be used to prove that there is zero risk at these levels.

Accordingly, the risk continuum assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, because the AIM simulation results indicate that only a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (See the Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, and Appendix D) and because the LFA sonar duty cycle is low (60–100 sec ping with 6–15 minute ''off'' periods) with missions lasting no more than 30 days (normally with two 9-day transmission periods/ mission), significant impacts to marine mammals are not expected. For example, stress is usually a long-term process, but the low duty cycle for SURTASS LFA sonar makes stress seem highly unlikely.

That stated, research on the behavioral reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB, has been identified by NMFS as an important component for continuing research under an LOA (see RTC MOC25).

Comment SIC11: The LFS SRP was insufficient because limited sample size in LFS SRP should not be construed as indicating a lack of impact.

Response: The Navy did not expect that these data would provide the definitive, final answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. For additional information, see the Final EIS (RTCs 4–5.10 and 4–5.23).

Comment SIC12: The LFS SRP was insufficient because the LFS SRP was limited in the temporal and spatial parameters observed (short-term effects only). No long-term effects studied. It is not clear that short-term behavioral responses are good indicators of the potential long-term effects. Significant changes in biologically important behaviors do not necessarily manifest themselves in short-term, visible behavioral responses; *i.e.,* these significant changes can go undetected. No long-term data on changes in reproduction rates or other long-term behavior.

Response: The LFS SRP was one of the largest scientific field studies on the potential impact of underwater sound on marine mammals to date, and consisted of four baleen whale indicator species and three phases, each in a different geographical location. Many scientific metrics were part of the LFS SRP, including aerial surveys, Sound Surveillance System (SOSUS) data collection, observation vessel sightings, and shore-based visual observations, which yielded large experimental datasets, collected in the wild. All of these provided information relating to more than just the potential for short-term biological behavioral effects. The scientific investigators observed some short-term behavior responses and some longer-term responses during the longer Phases I and III of the research, which approached the time period of a full SURTASS LFA sonar mission. The Navy and the independent scientists involved in the LFS SRP believe that the data from the LFS SRP, when combined with other data, provide an adequate basis for the analysis contained in the Draft and Final EISs. NMFS concurs. In addition, short-term studies can address the potential for impacts on behaviors that relate to demographic parameters such as birth rate, growth rate and death rate. For example, the LFS SRP addressed feeding rates, which relate to birth and growth rates. Finally, research on the long-term behavioral reactions of whales to LFA sounds has been identified by NMFS as an important component of a continuing research program under an LOA (see RTC MOC25).

Comment SIC13: The LFS SRP was insufficient because it did not study physiological and psychological stress. Also, it did not study non-acoustic responses.

Response: The LFS SRP field research studies complement Office of Naval Research (ONR) and Chief of Naval Operations (CNO)-sponsored laboratory studies on TTS, physiological stress, and soft tissue damage. The focus of the LFS SRP was on the potential for baleen whale behavioral reactions to LF sound in the wild. Methods to investigate physiological reactions (e.g., TTS, PTS, stress) to underwater LF sound have only recently been accomplished on captive small toothed whales and seals, and are not yet available for free-ranging large whales.

Comment SIC14: The LFS SRP was insufficient because humpback whales left the area in Phase III. This is supported by TR 1, Figure D–21.

Response: There was no statistically significant difference in the overall distribution of the number of animals during Phase III of the LFS SRP. For information regarding the sufficiency of the LFS SRP, see the Final EIS Subchapters 1.4.2, 4.2.4, and 4.2.4.3, and Final EIS (RTCs 4–5.1, 4–5.2, 4–5.6, 4–5.8, 4–5.10, 4–5.12, 4–5.14, and 4–5.21). Further, NMFS believes that the Navy has provided sufficient information to make its findings under the MMPA.

As a requirement of this regulatory action and the LOA, the Navy will conduct research in areas where information on the potential effects of SURTASS LFA sonar operations on the marine environment is incomplete. Potential topics for proposed research include responses of sperm and beaked whales to SURTASS LFA signals, behavioral responses of whales to sound levels not tested (specifically between 155 and 180 dB), and long-term and cumulative effects on marine mammal stocks (also see RTC MOC25).

Comment SIC15: The full results of the LFS SRP were not considered. All peer-reviewed data should be made available, including full results of the LFS SRP, and for all species concerned.

Response: All pertinent results from the LFS SRP were considered in the EIS analysis and in this rulemaking process. LFS SRP data are available to the public in TR 1. The LFS SRP was one of the largest studies on the effects of anthropogenic sound on marine mammals to date. Analysis of the LFS SRP data is continuing. However, there is no evidence in the data that indicates that deployment of the SURTASS LFA system with the mitigation protocols will have any significant effect on marine mammal stocks. Any future results from LFS SRP data analysis will be analyzed by NMFS and the Navy during this authorization period.

Comment SIC16: Much of the data from the LFS SRP, even that which has been analyzed, is still not fully interpreted. For example, based on Miller *et al.* (2000), it is assumed that male humpback whales consider LFA signals to be competition from other male singers.

Response: Miller *et al.* (2000) analyzed songs from six individuals, from whom they had complete song (i.e., a complete song cycle) recordings for periods before, during, and after the LFA transmissions. They found that song length increased during SURTASS LFA transmissions by an average of 29 percent, and returned to baseline length following the playback. Miller *et al.* (2000) suggested that song lengths were increased to compensate for acoustic interference. That interference is simply the presence of potentially masking noise—not the presence of a competing male. The response of singers to the

nearby presence of other singers is stronger, and includes the singer swimming toward and interacting with the other nearby singer(s) (Darling and Bérubé, 2001). These response components, typical of intra-sexual competition, were not observed in Miller *et al.* (2000), supporting their suggestion that the increase in song length is in response to the presence of noise in the bandwidth of the signal, not the presence of a competing male.

Comment SIC17: The results of the LFS SRP have not been published and have yet to survive the peer review process.

Response: This comment was addressed in the Final EIS (RTCs 4–5.18 and 4–5.19). To date one article and one paper regarding the results of the LFS SRP have been published: Miller *et al.* (2000), and Croll *et al.* (2001).

Comment SIC18: The Final EIS (RTC 4–5.27) states that many prior studies (prior to LFS SRP) were reviewed in the development of the marine mammal monitoring mitigation, yet no reference is made to these prior studies in the Final EIS.

Response: RTC 4–5.27 states that the Final EIS reviewed the results of prior studies. This information was utilized not only in determining the research strategies for the LFS SRP as noted in the Final EIS Subchapter 4.2.4.1, but also in the analyses performed and documented in the Final EIS. Marine mammal monitoring mitigation was developed as a result of this process; and, therefore, it included the review of literature utilized in the Final EIS for these purposes. A list of references can be found in the Final EIS (pages 13–1 to 13–54).

Comment SIC19: The National Research Council (NRC) stated that critical exposure levels cannot be extrapolated from a few species. However, this is what the Final EIS does based on testing on 4 mysticetes.

Response: It is impossible to conduct studies on all marine mammal species within a reasonable period of time. Accordingly, four mysticete species (blue, fin, gray, and humpback whales) were selected based on the criteria described under RTC SIC8. Their responses to LF sound signals during the LFS SRP were to serve as indicators for the responses of other potentially LF-sensitive species, which were presumed to be less vulnerable to SURTASS LFA sonar signals. For additional information see Final EIS (RTC 4–5.1).

LFS SRP Phases I and II

Comment SIC20: During the LFS SRP Phase I, the sample size was too small for statistical evaluation of an apparent drop in vocalization rate by fin and blue whales and the no impact findings may have been an artifact of the small sample size.

Response: NMFS and the Navy did not expect that these data would provide a definitive answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. For additional information, see the Final EIS (RTCs 4–5.10, 4–5.23, and 4–5.44).

Comment SIC21: Gray whales cannot be used as indicator species as supported by the Navy's statement in Final EIS (RTC 4–4.18) where it stated, ''Gray whales inhabit a unique environment, and all research conducted to date indicates that their behavior does not generalize to other species.''

Response: The statement was taken out of context. The term ''their behavior'' referred only to avoidance by gray whales of sound that was in their migratory path. The LFS SRP results showed that gray whales do not respond to 155 dB RL, generated outside of their migratory path. The gray whale research in Phase II of the LFS SRP was done with a different objective than Phases I and III.

LFS SRP Phase III

Comment SIC22: There is a very real question as to whether the results of the LFS SRP Phase III are statistically significant.

Response: The LFS SRP was intended to collect field research data regarding the responses of selected species of cetaceans to LF sound and, in that respect, the independent scientist principal investigators and the Navy strongly believe it was successful. The Navy did not expect that these data would provide the definitive, final answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. Phase III included a total of 33 playback experiments with 17 being conducted during focal follows. Singers continued to sing throughout seven of the 17 playbacks. There were six cases of song cessation that were considered possible responses to playback. During the testing period there were 191 hours of control and almost 33 hours of playback observations.

Comment SIC23: One commenter stated that a scientist hired by the Navy to conduct the LFS SRP cautioned in the Executive Summary of the Hawaii Quicklook Report that ''it will be difficult to extrapolate from these tests (with received levels below 155 dB and usually below 140 dB) to predict responses at higher exposure levels.'' Yet the Navy did not heed the advice of the LFS SRP scientist because they extrapolated in the Final EIS to conclude that there is no significant risk below 180-dB levels.

Response: The actual quote from the Quicklook of Phase III dated August 31, 1998, states, ''Responses did not scale consistently to received level, and it will be difficult to extrapolate from these results to predict responses at higher exposure levels.'' This was addressed in the Final EIS (RTC 4–5.1). The analysis presented in the Final EIS does not extrapolate from 150 dB to 180 dB. The selection of the 180-dB criterion was not related to results from the LFS SRP. The Navy accepts that risk is high at 180 dB RL, and assumes that risk of a significant change in a biologically important behavior is low below 150 dB RL because of the relatively modest responses observed during the LFS SRP.

The risk continuum is a biologically reasonable formula for reconciling the LFS SRP data with the conventional assumption of high risk at 180 dB RL. The fact that responses did not consistently scale with RL confirms the risk continuum assumption that not all individuals will react identically when exposed to the same level of SURTASS LFA sonar signals. It should be noted that the risk continuum function corresponds to a dose-response function in a typical pharmacological risk assessment. The Navy's analyses estimated the risk posed by SURTASS LFA sonar by treating the risk of biologically significant behavior to received levels (SPLs in decibels) using probability distribution functions. The results of these analyses appear as continuous functions that are analogous to dose-response curves used in toxicology: at one end of these curves, low received levels (''low dose'') would not be expected to elicit a response in the species; at the other end of these curves, high received levels (''high dose'') would be expected to elicit much more serious responses. These types of data analyses are accepted as the best practice in disciplines ranging from epidemiology, toxicology, and pharmacology.

Comment SIC24: One commenter disagrees with the Navy's interpretation that changes in singing behavior from the LFS SRP results in a minor, non-significant change. Because song is related to mating behavior, any change is likely to be significant to the limited gene pool of the endangered humpback whale.

Response: TR 1 concerning Phase III (humpback whales) stated, ''Many of the whale subjects continued to sing and interact during the playback. Some behavioral responses of focal whales were observed during playback * * * Most of the whales that did respond resumed activities normal for the breeding area within less than an hour.'' The independent scientists conducting Phase III of the LFS SRP did not conclude that these alterations of behavior were widespread. Therefore, NMFS believes that it is unlikely that a SURTASS LFA sonar vessel, transmitting at no more than a 20-percent duty cycle and moving constantly, thereby resulting in only short term noise interference for an individual animal; and operating at various locations in a yearly period would have a significant (or widespread) impact to this biologically important behavior, including those for humpback whales. This conclusion is supported by the Final EIS analysis.

Comment SIC25: The actual range of RLs during Phase III that coincided with cessation of singing was 103.5 to 142.3 dB, not 120 to 150 dB.

Response: Table D–15 in TR 1 presents the RLs of the 17 singers followed by the observation vessel. The range of RLs for singers that stopped singing was 121.5 to 150.5 dB. The RLs for singers that did not stop singing was 122.8 to 149.9 dB.

Comment SIC26: There is no discussion of the reports of whales leaving the test area (Phase III) in the Final EIS. ''Omission of this information cannot be other than deliberate.''

Response: The Final EIS addresses this issue in RTC 4–5.10. Humpback whales typically commence their migration from Hawaiian waters in early March. Thus, the decrease in whale numbers in March is consistent with the typical departure schedule for humpback whales.

Comment SIC27: Data imply that there were more whales off the Kona coast on March 8 than on March 1 (Mobley survey), thus supporting the possibility that SURTASS LFA testing drove humpback whales out of one of their favorite breeding and birthing areas. Such effects are biologically significant.

Response: In a court declaration on March 19, 1998 (See Final EIS Appendix C Tab G), Dr. Mobley recounted a higher sighting rate of 0.21 whales per minute for March 1, 1998, versus 0.29 whales per minute for March 8, 1998, for the area off the Kona, or west side, of Hawaii. The declaration did not specify the location in any more detail, nor did it indicate the size of the survey area. However, a larger data set taken over a much longer time period than one week is needed before conclusions can be drawn. Dr. Mobley also stated in his declaration that for the same area there were more than twice the whales than in 1995. It should be noted that the results from the LFS SRP Phase III show a different result. Sightings made from the observation vessel showed an observation rate of 1.5 humpback whales per hour on March 1, 1998 and 3.0 humpback whales per hour on March 8, 1998. Therefore, the scientific data are scientifically inconclusive that the LFS SRP Phase III drove humpback whales out of the area off the Big Island.

Comment SIC28: The Mobley 1998 survey did not include Keahole Point, nor were there any surveys before the testing.

Response: Mobley *et al.* (1999) indicate that the tracklines used during the 1998 survey included the Kona coast and the west side of Hawaii, which includes Keahole Point.

Comment SIC29: As reported by a whale watching activity in Hawaii, the season after the LFS SRP Phase III (1998–99) showed a dramatic drop in numbers of humpbacks in Kona waters as compared to the previous year. The whale watching industry in the remaining areas of the Hawaiian Islands reported numbers at least equal, or as in the case of Kauai, much greater. The Navy did not do follow up research in the area the following year.

Response: The Navy funded statewide research surveys in 1998 and 2000 for Hawaiian waters that included the Kona Coast. Preliminary results indicate that there were fewer whales around the Big Island relative to other areas: however, the sea state conditions for the Big Island were worse in 2000 relative to 1998 (J. Mobley, pers comm). The mean values were a Beaufort sea state of 3.24 for the 2000 survey and 2.82 for the 1998 survey. Buckland *et al.* (1993) found that sea state greatly affects the probability of detection of marine mammals. Based on previous surveys (1993–1998), Mobley *et al.* (1999) found that the probability of detecting a whale at the surface dropped significantly beyond a Beaufort sea state of 3. Moreover, the overall trend since 1993 is for increasing numbers of humpback whales visiting the Hawaiian Islands.

Comment SIC30: Did Phase III of the LFS SRP cause the decline of spinner dolphin population on Hawaiian waters? Reports by independent naturalists, whaleboat captains and fishermen of stillbirths by spinner and spotted dolphins after the LFS SRP Phase III have not been studied by the Navy.

Response: NMFS has not received any scientifically supportable evidence of the decline of spinner/spotted dolphin populations in Hawaiian waters, nor information on still births. Forney *et al.* (2000) and Caretta *et al.* (2001) do not support a hypothesis that there has been a population decline.

Comment SIC31: The Final EIS did not include reports of abnormal behavior by marine animals off Hawaii during the tests (schooling hammerhead sharks, whales swimming at high speeds, dolphins behaving as if threatened).

Response: The reports of the abnormal behavior by marine animals during the LFS SRP Phase III are included in the Final EIS in Appendix C Tabs A, B, and E. In court declarations both Dr. Mobley (Final EIS Appendix C Tab G) and E. Nitta (Final EIS Appendix C Tab H) stated that none of these behaviors were unusual for the Hawaiian waters. In his court declaration (Final EIS Appendix C Tab F) Dr. Fristrup stated that the reported calf breaching activity fell within the range of breaching activity observed during the control period (when the sound source was off). The reported lone humpback whale calf breaching off Hawaii during the LFS SRP Phase III was discussed in the Final EIS (RTC 4–5.25). Reported ''acute behavioral responses'' during the LFS SRP Phase III are discussed in the Final EIS (RTC 4–5.46).

Comment SIC32: The Final EIS does not meet the minimal standards in dealing with the Chris Reid complaint during Phase III of the LFS SRP. The declaration filed by Dr. Kurt Fristrup in Appendix C of the EIS does not include Ms. Reid's revised date of 10 March 1998. The EIS does not contain the second Fristrup response, which states that a person at Ms. Reid's location would have experienced a received level of 125 dB.

Response: The Navy has conducted a comprehensive and thorough scientifically based research program on the potential effects of LF sound on human divers. Medical doctors and clinical researchers have carried out extensive computer modeling and testing of human and animal subjects. (All testing was done within the guidelines for the protection of human subjects and standard ethical procedures for animal experiments.) The study concluded that the maximum tested sound level of 157 dB did not cause damage to internal or external tissues, or the vital bodily functions and processes in human subjects. Based on the data obtained from these studies, the

Navy Bureau of Medicine incorporated a wide safety margin and established a very conservative limit of 145 dB for LF received sound level for recreational and commercial divers. The mitigation measures provided in the Final EIS will ensure that no diver will be exposed to levels of sound above 145 dB.

The commenter has misinterpreted Dr. Fristrup's statement in his second declaration. Dr. Fristrup stated, ''Given our source level and range to Keahole Pt., the conservative estimate of received level would be 125 dB. This is equivalent to the received level of song from a singing humpback whale at 400 m distance.'' Also this is 20 dB below the maximum allowable level that the Navy has determined to be the accepted LFS exposure level (145 dB) to recreational and commercial divers, or 100 times less intense. See Final EIS RTC 4–5.26 and Appendix C for additional information.

LFS SRP Conclusions

Comment SIC33: LFS SRP demonstrated that exposure up to 155 dB (and often lower than 155 dB) causes small but measurable (and statistically significant) behavioral responses (Ref: Croll *et al* (2001), and Miller *et al.* (2000)). Scientific data from the LFS SRP does not justify the Navy's statement that levels below 150 dB are less than 2.5 percent likely to lead to a ''significant change in biologically important behavior'' because roughly one quarter of the singers in Phase III stopped singing in response to the LFA signal as low as 130 dB.

Response: The LFS SRP, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant change in biologically important behaviors. Most of the singers resumed their songs when the SURTASS LFA signal was terminated. Therefore, the use of 2.5 percent for potential significant change in biologically important behavior at levels below 150 dB is warranted. This is addressed in the Final EIS (RTC 4–5.10 and 4–6.19) and Subchapters 1.4.2, 4.2.4, and 4.2.5.

Comment SIC34: NMFS should direct the Navy to conduct further scientific testing on a broader range of species and at higher RLs before an LOA is issued.

Response: The Navy has instituted a long term research program that will address NMFS-identified research issues potentially including responses of sperm and beaked whales to SURTASS LFA signals, behavioral responses of whales to sound levels not tested (specifically between 155 and 180 dB), and long-term and cumulative effects on marine mammal stocks. These research issues are described in RTC MOC25. However, it is not necessary to delay this rulemaking until more information is available since the Navy has provided sufficient information in its Final EIS for NMFS to make the findings required by the MMPA. These findings are discussed later in this document.

Comment SIC35: The results of the LFS SRP cannot be used, regardless of the findings, to show absence of harm at sound levels up to 180 dB. The Navy predicted a ''small take'' on the basis that a received level of 180 dB would be relatively safe. This was not based on direct tests.

Response: The LFS SRP was not designed to demonstrate the absence of harm at sound levels up to 180 dB, nor was this criterion based on direct tests. See Final EIS (RTC 4–5.9) for more details. ''Small takes'' were not based on the 180–dB received level, but on SPLs between 119 and 215 dB.

Comment SIC36: There was an inappropriate comparison of the results of the Acoustic Thermometry of Ocean Climate (ATOC) project impact on humpback and sperm whales to LFA. Commenter stated that the Final EIS willing to use data from ATOC to conclude that there is an absence of responsiveness to LF broadcasts. However, when ATOC caused whale deaths, the Final EIS stated that ATOC and LFA had different acoustic patterns.

Response: As discussed in the Final EIS (RTC 4–4.20), there is no evidence that ATOC transmissions resulted in the death of any whale.

Impact Criteria/Risk Continuum

Comment SIC37: The LFS SRP cannot be used to determine the ''risk continuum.''

Response: As explained in the Final EIS, the risk continuum was not determined exclusively by the results of the LFS SRP. See Subchapters 1.4.2.2 and 4.2.4.3 for more details.

Comment SIC38: The discussion on pages 54–56 of the LOA application (regarding the 180–dB criterion) differs from information found in the Navy Final EIS; neither is convincing. In the application, the Navy speculated that cetaceans that hear best at low frequencies would have higher thresholds than cetaceans that hear best at high frequencies because ambient noise levels are higher for LF. These levels cannot be used to speculate because ambient noise levels have been increasing in recent times and because noise levels in the past history are unknown.

Response: The LOA application is based on information contained in the Draft EIS, while the proposed rule relies on information contained in the Final EIS. NMFS believes that the Navy's Final EIS combined with the empirical data collected during the LFS SRP and other data provide a reasonable basis for informed decision-making.

Figure 1–4 of the Final EIS provides information on hearing thresholds of marine mammals indicating that mysticete auditory thresholds at their best hearing frequencies are estimated to be about 60 to 90 dB while the thresholds for odontocetes at their best hearing thresholds are about 30 to 40 dB. Additional information can be found in Subchapter 1.4 of the Final EIS. However, NMFS believes that the commenter has misinterpreted the statement in the Navy's application. Archaic ambient LF noise levels are presumed to have been lower than ambient noise of today, due in major part to increases in worldwide shipping, but offset somewhat by archaic volcanic activity. To estimate the threshold for hearing of LF marine mammal specialists (i.e., the large whales), the Navy and NMFS used the best science available on this issue by adopting threshold levels cited in Ketten (1998). Use of this information, while somewhat speculative, remains the best science available until such time as NMFS and the Navy are successful in measuring threshold levels for marine mammals under MMPA scientific research permit 931–1597–00 (dated May 22, 2001).

Comment SIC39: Because the LFS SRP was conducted at a maximum level of 160 dB, this implies that the Navy agreed with many researchers that there is a potential physical threat to marine mammals over 160 dB.

Response: Based on early comments from the MMC and others stating that there may be insufficient information available for the assessment of the potential environmental impacts to conduct a proper NEPA review, the Navy convened a scientific working group of government and non-government scientists to provide advice on needed research. The Navy, based on inputs from the scientific group, developed and implemented the three-phase LFS SRP (see Final EIS Subchapter 4.2.4). The goals, as set by the scientific group, were to determine short-term behavioral impacts to those marine mammals presumed to have the greatest sensitivity to LF sound, the baleen whales. The maximum level of 160 dB was set by the scientific working group and the independent scientists, who planned and executed the LFS

SRP, not the Navy. However, as indicated by research (Schlundt *et al.* (2000), Cudahy and Ellison (2002), and Crum and Mao (1996)), the choice of 160 dB should not be interpreted to mean that injury occurs at an SPL of 160 dB.

Comment SIC40: One commenter stated that on page 52 the LOA application mentioned that Richardson *et al.* (1995) conjectured that prolonged exposure to 120 dB might cause PTS in odontocete species at their most sensitive frequency. This acoustic behavior of odontocetes cannot be used to predict the acoustic behavior of all whales because their hearing is above LFA transmissions frequencies.

Response: The statement in the Navy application notes that the 120 dB level corresponds to the level of uninterrupted sound conjectured by Richardson et al. (1995) that might lead to PTS in the most sensitive odontocete species at their most sensitive frequency, *if exposure were sustained for a very long time.* Recent research does not fully support the commenter's conjecture. Schlundt *et al.* (2000) showed that bottlenose dolphins experience onset of masked TTS (defined as 6 dB of shift) from a one-second, 3–75 kHz, exposure at approximately 192 dB RL sound. Assuming a 3–dB exchange rate (e.g., the same amount of shift that would result from reducing the intensity by 3 dB and doubling the exposure time (Finneran *et al.,* 2000), these odontocetes could experience TTS from a 16-second exposure to a 180–dB sound at their best frequency, a 32-second exposure at 177 dB, etc. Since this approximation is for mid-frequency marine mammal specialists at mid-frequency sound levels, NMFS believes that low frequency marine mammal specialists should incur TTS at similar levels and duration when exposed to low frequency sounds. However, the typical SURTASS LFA signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions lasts between 6 and 100 seconds, although the duration of each continuous frequency sound transmission is normally 10 seconds or less. Therefore, the SURTASS LFA signal itself is unlikely to result in either PTS or TTS in marine mammals.

Comment SIC41: The composite pinniped audiogram (Final EIS Figure 1–4) is misleading. It is oversimplified and ignorant of published audiometric data. There is a substantial difference between phocids and otariids.

Response: The composite audiograms shown in Figure 1–4 use measured and estimated marine mammal hearing data to illustrate that mysticetes have the best LF hearing of all marine mammals. As stated in the Final EIS Subchapter 1.4.2.1 and within Figure 1–4, the thresholds shown for pinnipeds are a composite of measured *lowest* thresholds for multiple species from Richardson *et al.* (1995). It is recognized that there is a substantial difference between phocids and otariids concerning hearing, however, this does not change the conclusion in the Final EIS that there are no marine mammals with more sensitive LF hearing than mysticetes.

Comment SIC42: The assumption that the potential for masking effects is negligible because of narrow bandwidth and maximum 10-second duration is incorrect. Also, if we assume that there is no noise other than LFA sonar, it still would not be adequate for a whale to experience no masking 80 percent of the time, if during the other 20 percent of the time a predator is masked, resulting in the whale's death.

Response: The potential impacts for masking by the SURTASS LFA sonar are assessed in the Final EIS Subchapter 4.2.7.7. In summary, masking effects are not expected to be severe because the SURTASS LFA sonar bandwidth is very limited (approximately 30 Hz), the signals do not remain at the same frequency for more than 10 seconds, and the duty cycle is limited (system off at least 80 percent of the time). For example, Dahlheim *et al.* (1984) determined that gray whales in the San Ignacio Lagoon, Baja California shifted the frequencies of their vocalizations away from the predominant noise producers in the lagoon to overcome masking effects. This was also addressed by Richardson *et al.* (1995) who noted in particular that marine mammals, like terrestrial animals, have evolved adaptations to reduce masking of sounds that are important to them. Therefore, it is very likely that, if necessary, marine mammals can adapt by shifting their vocalizations away from the narrow SURTASS LFA frequency band. The probability of an intermittent sound of interest to a marine mammal continuously overlapping the SURTASS LFA signal (with its 6- to 100-sec. transmission period every 6 to 15 minutes) for any period of time is small. A continuous sound, such as noise from a ship, cannot be masked by the intermittent SURTASS LFA transmission.

Comment SIC43: The attempt to apply a single noise exposure standard for all marine mammals is a gross oversimplification of an exceedingly complex and poorly understood suite of issues.

Response: NMFS and the Navy concur that the effects of anthropogenic sound on marine mammals is exceedingly complex and there is a lack of information on many, if not most, species. The complexity and length of the Final EIS is testimony to this. Because of this, very conservative assumptions were used for all of the Navy's analyses. These assumptions are detailed in the Final EIS Subchapter 1.4.3.

The exposure standard used in the Final EIS analysis for all potentially affected marine mammals is appropriate because of its extremely conservative bias. Foremost of these is that all marine mammals were evaluated as if they were equally as sensitive to LF sound as the baleen whales.

180–dB Criterion

Comment SIC44: There are two separate justifications presented for the utilization of the 180–dB criterion for the onset of injury, or threshold shift, one in the proposed rule based on the Draft EIS and the other in the Final EIS. Notwithstanding this, each of these analyses tends to underestimate the potential for auditory impacts. Factors include: (1) Reliance on the Ridgway TTS study; (2) inaccurate use of the HESS (High-Energy Seismic Survey) Workshop and NMFS' Acoustic Criteria Workshop; and (3) reliance on human audiology to determine threshold shift based on ''equivalent quiet.'' Finally, the Navy's theory is inconsistent with the little empirical data that exists on marine mammals (pinnipeds). The extrapolation of human hearing loss data to create models for estimating potential injury to marine mammals may be unfounded. The adoption of a 180–dB SPL as safe for all marine mammals is unsupported by science and actual events (e.g., the beaked whales strandings in Greece and the Bahamas).

Response: The determination of the 180–dB criterion for injury was developed from a combination of several scientific studies and analytical calculations including: (1) Marine mammal hearing thresholds, (2) human hearing loss studies, (3) comparison of fish hearing loss studies, and (4) TTS studies. This was noted in both the Draft and Final EISs. The HESS and NMFS workshops concluded that the 180–dB SPL is the point above which some potentially serious problems in the hearing capability of marine mammals could start to occur. Detailed information on this subject is provided

in the Final EIS Subchapter 1.4.2.1. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion.

While there is limited empirical evidence at this time (beyond Schlundt *et al.,* 2000) on any injury criterion, the 180 dB level makes common sense, given that Frankel (1994) estimated the source level for singing humpback whales to be between 170 and 175 dB while Au and Andrews (2001) measured their calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald *et al.* (2001) to be 186 dB; Watkins *et al.* (1987) and Charif *et al.* (2002) found source levels for fin whales up to 186 dB; and Mohl *et al.* (2000) recorded source levels for sperm whale clicks up to 223 dB. If marine mammals vocalize at these levels, it is realistic to believe that these species have also evolved mechanisms to protect themselves and conspecifics from high SPL vocalizations.

Comment SIC45: One commenter asked that NMFS ''prove that the experts agreed that 180 dB was an appropriate threshold of mitigation for the LFA source, based on scientific evidence of biologically important impacts rather than Navy needs or mitigation potentials.'' Provide certification that the 180–dB criterion is specifically supported by the following workshops: HESS, ONR Workshop on the Effects of Man-Made Noise on Marine Mammals, and NMFS Workshop on Acoustic Criteria. The 180–dB criterion is not accepted by the vast majority of competent non-U.S. Navy supported scientists.

Response: A panel of nine experts in the fields of marine biology and acoustics sponsored by Southern California's HESS Team convened at Pepperdine University in June, 1997 to develop marine mammal exposure criteria (Knastner, 1998). The consensus of the combined experts was that they were

''apprehensive'' about levels above 180 dB re 1 μPa (rms) with respect to overt behavioral, physiological, and hearing effects on marine mammals in general. Therefore, the 180–dB radius, as initially defined by transmission loss model and verified on-site, is recommended as the safety zone distance to be used for all seismic surveys within the southern California study area.

Those scientists and experts from Cornell University, University of California San Diego, University of Maryland, Woods Hole, NOAA, ONR, and Naval Submarine Medical Research Laboratory who assisted in the preparation of the Draft and Final EISs support the 180–dB criteria. The Final EIS states, ''For the purposes of the SURTASS LFA sonar analyses presented in this OEIS/EIS, all marine animals exposed to RLs ≥180 dB are evaluated as if they are injured'' (See Final EIS page 1–34, also See Final EIS pages 14–1 to 14–4 and RTC 4–4.9).

However, NMFS has advised caution with any widespread use of the 180–dB standard for other than impulsive noise. Because SURTASS LFA is not an impulsive noise, the Navy conservatively presumed that any marine mammal exposed to SURTASS LFA sonar received levels of ≥180 dB are evaluated as if they are injured for the purposes of their analysis and operational mitigation.

Comment SIC46: NMFS' mandate is to ensure that ''the taking will have negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an immitigable adverse impact of the availability of the species or stock(s) for subsistence use.'' Why does NMFS believe that an RL of 180 dB is an adequate threshold of LFA mitigation to satisfy this mandate? Unless and until the Navy and NMFS can provide an empirically based rationale for choosing 180 dB as the upper limit for acoustic harassment and non-serious injury, rather than any other value between 150 and 180 dB, the 120–dB criterion currently in use should not be abandoned. The LFS SRP does not justify revision of the general criterion from 120 to 180 dB. The use of a level lower than 180 dB as the injury level is appropriate. There is no scientific basis for the 180–dB standard as the upper limit of harassment.

Response: The comment fails to distinguish between an SPL that has been used previously to indicate the onset of Level B harassment for non-impulse (intermittent) noise (i.e., 120 dB) and the level that NMFS and others have adopted as a precautionary level to prevent injury for an impulsive sound (i.e., 180 dB). Research conducted by Malme *et al.* (1983, 1984) showed that gray whales demonstrated statistically significant responses to four different playbacks typical of industrial (intermittent/continuous) noise from oil production (drillship, semisubmersible, drilling platform, and production platform) at RLs of approximately 120 dB. Therefore, this level was the basement level established by NMFS previously for all non-impulsive noise that indicated marine mammals could potentially be harassed at those received levels. For industrial-type (non-impulsive, intermittent and continuous) noise sources, unless noise levels can be mitigated to below this level at the marine mammal, a small take authorization may be necessary in order to remain in compliance with the MMPA's prohibition on taking by harassment. Since the Navy determined that SURTASS LFA sonar operations could result in marine mammals being exposed to SPLs greater than 120 dB, it applied for an authorization under the MMPA for incidental taking. Based on the LFS SRP results, 119 dB was adopted by the Navy as the B parameter (or basement value) for risk to have a significant biological response on the part of the marine mammal. This is explained in more detail in the Final EIS (Subchapters 4–2.3 and 4–2.5.1). Also explained in the Final EIS (Subchapter 1.4.2.1) and in this document are the reasons for determining that 180 dB is a conservative estimate for assessing the onset for injury.

Once the determination is made that a taking will have no more than a negligible impact on affected marine mammal stocks (as is done in this document), the MMPA requires NMFS to prescribe regulations ''setting forth* * * means for effecting the least practicable adverse impact on such species or stocks.* * *'' These ''means'' are called mitigation measures by NMFS and have been set out in 50 CFR 216.184 and include the establishment of the 180–dB sound field (i.e., SURTASS LFA mitigation zone) wherein the Navy will not transmit whenever a marine mammal is within that zone. This 180–dB sound field has been determined to be the lowest SPL that is practicable to prevent injury to marine mammals. The HF/M3 sonar is effective up to 2 km (1.1 nm), no practical alternative mitigation measures have been identified that would be superior to the HF/M3, and NMFS and the Navy have shown elsewhere in this document that injury to marine mammals would not occur at lower SPLs. As a result, NMFS has determined that the Navy has mitigated harassment takings to the greatest extent practicable.

Please see RTC SIC44 on why the 180 dB level is a realistic application based upon existing knowledge. In summary, if marine mammals vocalize at high SPLs, it is realistic to believe that these species have also evolved mechanisms to protect themselves and conspecifics from high SPL vocalizations.

Comment SIC47: One commenter stated that a RL of 180 dB as the appropriate threshold of mitigation for the LFA source is not substantiated, and is not scientifically or legally defensible. The commenter stated that the Navy's designation of the 180–dB zone of

influence is arbitrary and capricious and that the Navy uses the 180–dB sound field to significantly limit the scope of mitigation.

Response: Please see RTC SIC46 regarding the establishment of a 180–dB safety zone and the scientific basis for this determination. In addition, the 180–dB determination is supported by two government-sponsored workshops. The 180–dB criterion was not arbitrarily selected based on the fact that the monitoring mitigation methods are only effective to 1 km (0.54 nm), but on the need to minimize the potential for injury. Depending on conditions, visual monitoring can be effective up to 3 nm (5.5 km). Passive acoustic monitoring does not provide range, but will effectively locate the bearing of vocalizing animals at greater distances. Finally, the HF/M3 sonar is effective up to 2 km (1.1 nm)(See the Final EIS Figure 2–5).

Comment SIC48: Based on the stranding in Greece and the results of the LFS SRP (gray whales changing their migration route), it appears that the risk continuum underestimates the decibel level of risk for change in biologically important behavior.

Response: There are no scientific data relating the strandings in Greece to sonar received levels below 180 dB. The LFS SRP, which included gray whales changing their migration route close to shore, exposed baleen whales to RLs ranging from 120 to about 155 dB. This research detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. Also, AIM simulation results demonstrate that a very small portion of any marine mammal stock would be exposed to sound levels exceeding 155 dB. Therefore, the risk continuum does not underestimate the level of risk for change in biologically important behavior. For additional information, see Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, RTC 4–6.2, and Appendix D.

Comment SIC49: In the Final EIS the use of extrapolated data from human auditory standards to justify the 180–dB criterion is inappropriate. Also it is not only highly unlikely that the equivalent quiet (EQ) value for marine mammals in water would be the same as that for humans in air, but the empirical data from Kastak *et al.* (1999) indicate that it is not the same. EQ calculations should be at least 10 dB lower than the 140 dB given in the Final EIS.

Response: In accordance with best scientific practice, the Final EIS Subchapter 1.4.2.1 (Estimating the Potential for Injury to Marine Mammals) studied and analyzed all extant and viable hearing data. These went into the Final EIS discussions on marine mammal hearing thresholds, human hearing loss studies, selection of the 180–dB criterion, extrapolation to marine mammals, comparison to fish hearing studies, and TTS. Where extrapolation and estimation were necessary, internationally recognized scientific subject matter experts in marine biology, marine mammalogy and underwater acoustics were called on to develop this part of the Final EIS.

EQ values extrapolated from human measurements were compared with Kastak *et al.*'s (1999) mean values of onset of TTS for the harbor seal (137 dB), sea lion (150 dB) and elephant seal (148 dB) for 20-minute periods of octave band noise (OBN) in the 100–2,000 Hz frequency regime. The resultant EQ values (adjusted for 8-hour exposure as in Kastak *et al.*'s (1999) 20 minutes) were 125 dB for the harbor seal, 138 dB for the sea lion, and 136 dB for the elephant seal, yielding an average EQ of 133 dB. Applying the SURTASS LFA sonar 100-second EQ differential level of 54 dB to these values results in single-ping safe exposure levels of 179, 193, and 191 dB, respectively, for the three species tested by Kastak *et al.* (1999). Therefore, a 100-second duration for SURTASS LFA sonar of 180 dB can be considered appropriate and, based on Kastak *et al.* (1999) sea lion and elephant seal data, should be conservative for these species at least. See the Final EIS pp. 1–24 to 1–27 for more details.

Ketten (2001) has stated that marine mammal ears physically resemble land mammal ears, and since many forms of hearing loss are based on physical structure, it is therefore likely hearing damage occurs by similar mechanism in both land and marine mammal ears.

Comment SIC50: The Navy ''reverse engineered'' the presentation of risk to obtain a mitigation level of 180 dB at 1 km (0.54 nm) thus limiting the scope of mitigation. Because 1 km (0.54 nm) can be most effectively monitored visually and with passive acoustics, 180–dB level was therefore chosen. One commenter's hypothesis is that significant biological behaviors take place at RLs far below the level assumed in the EIS and that mitigation of those impacts is probably impossible.

Response: The 180–dB criterion was not selected based on the fact that the monitoring mitigation methods are only effective to 1 km (0.54 nm). Refer to RTC SIC44 for the 180–dB selection criteria. Depending on conditions, visual monitoring can be effective for greater than 1 km (0.54 nm) and under good conditions can extend to 5.5 km (3 nm). Passive acoustic monitoring does not provide range, but will effectively locate the bearing of vocalizing animals at greater distances than either of the other two methods. Finally, the HF/M3 sonar is effective up to 2 km (1.1 nm) (See the Final EIS Figure 2–5). For additional information see the Final EIS (RTC 4–6.5 and 5–1.14).

Comment SIC51: SURTASS LFA sonar operators need to monitor exposure to animals at levels of 160 dB and above for continuous, or quasi-continuous (longer than the integration time of mammalian ears), noise with an absolute never-exceed value of 170 dB in order to reasonably expect to have no physiological damage.

Response: There is no scientific evidence of what a ''never exceed'' value should be for marine mammals. Essentially, the commenter noted this by stating ''longer duration signals should be assigned a lower limit, perhaps in the region of 170 dB.'' The justification for the Navy's use of the 180–dB criterion for potential injury to marine mammals is discussed in several previous RTCs. For information on monitoring capability for the SURTASS LFA sonar system, see Monitoring Concerns later in this document.

Comment SIC52: If human divers can only safely absorb SURTASS LFA sonar under 145 dB as proposed in the Final EIS, why is it likely that whales can escape injury at much higher levels (up to 180 dB)?

Response: As noted in Final EIS (RTC 4–6.21), the two levels are based on different criteria. The 145–dB criterion for divers is based on psychological aversion (as behavioral response), and the marine mammal criterion is based on potential injury.

Comment SIC53: According to the Navy, it did not deem it necessary to develop an ''injury continuum'' because of the low number of marine mammals that could potentially experience high RL. This assumption should be validated with detailed research.

Response: NMFS and the Navy do not believe it desirable or necessary, let alone humane, to test animals at or above levels of potential injury in order to develop an injury risk continuum (above 180 dB). All marine mammals exposed to RLs at or above 180 dB are considered for the analysis and for monitoring/ reporting purposes to be injured and SURTASS LFA sonar is

mitigated to prevent any injury. In other words the injury risk is 1.0, which is a very conservative assumption, because not all marine mammals exposed to 180 dB and higher RLs will actually be injured.

Risk Continuum

Comment SIC54: The Navy and NMFS have concluded that RLs of LF sound below 180 dB are unlikely to cause either TTS or significant disruption of feeding, breeding, or other biologically important behaviors. No data are provided or experiments performed to support the conclusion that exposure levels below 180 dB will not cause significant disruption of any biologically important behavior. The conclusion that 180 dB is relatively safe for marine mammals deviates from accepted literature and is not based on empirical data, but on extrapolation above 155 dB.

Response: The scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. Taken together, the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to RLs near 140 dB would exhibit disturbance of behavior and avoid the area (Richardson *et al.*, 1995). These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. The LFS SRP results, however, cannot be used to prove that there is zero risk at these levels. Accordingly, the risk continuum assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, the AIM simulation results indicate that only a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (See the Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, and Appendix D).

Comparisons of research and analyses of TTS to the 180–dB criterion are discussed in the Final EIS Subchapter 1.4.2.1. Research on the behavioral reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB, has been identified by NMFS as a potential topic for the follow-on research under the LOA.

Comment SIC55: Based on the risk continuum 95 percent of marine mammals at RL of 180 dB are at risk. Also all marine mammals exposed to ≥ 180 dB are evaluated as if they were injured. Therefore, if most are at risk at 180 dB, then some are at risk at levels below 180 dB.

Response: The risk continuum and the 95 percent value refer to ''significant changes in biologically important behavior'' while the ≥ 180 dB value of RL is the risk of the onset of injury. The Final EIS did consider exposures below 180 dB as posing a risk of injury, but determined that the 180–dB criterion for injury is appropriate as detailed in previous responses. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance and tissue damage from LFA signals to cause injury supports this conclusion.

Comment SIC56: One commenter stated that the risk continuum is accepted by NMFS as one of the hypothetical assumptions in the Final EIS to support the 180–dB criteria. This commenter also stated that the risk continuum means that 50 percent of all animals exposed to 165 dB are injured.

Response: The commenter has misinterpreted the basis for the risk continuum as being a measure of injury. It is not a measure of injury; it is a measure of the potential risk of significant change in a biologically important behavior. This is explained in the Final EIS Subchapter 4.2.3.

Comment SIC57: At 66 FR 15386, first column, third paragraph in the proposed rule document, it states, ''Because the LFS SRP failed to document any extended biologically significant response at maximum RLs up to 150 dB, the Navy determined that there was a 2.5 percent value of a risk of an animal incurring a disruption of biologically important behavior at an SPL of 150 dB, a 50-percent risk at 165 dB, and a 95-percent risk at 180 dB.'' However, NMFS provides no indication of what is meant by ''extended biologically significant behavior'' and how does this term conform to the statutory definition of harassment?

Response: In the 1999 application, the Navy stated, ''The value of A used (10) (i.e., A = 10) was consistent with the LFS SRP results, which failed to document any extended, biologically significant response at maximum RLs up to 150 dB.'' (As defined in the Final EIS Subchapter 4.2.5.2, the A parameter controls how rapidly risk transitions from low to high values with increasing SPL). The term ''extended'' related to the results of the LFS SRP and meant that none of the biologically significant behaviors observed during the LFS SRP persisted for any period of time and all subjects returned to normal activities within tens of minutes of cessation of playbacks. Additional details on the risk continuum can be found in the Final EIS Subchapter 4.2.5.

However, NMFS believes that the term ''extended'' as used in the Navy application is a higher threshold than harassment, which refers to a reaction that is behaviorally significant on the part of the animal in the course of that animal's conducting a biologically important activity, such as breeding, feeding, or migrating. Therefore, the term ''extended'' is not used in this document or in the Navy's Final EIS. In this context, it is the impact of the activity on the animal, more than the duration of the disturbance, that is critical. NMFS clarifies that, for small take authorizations (as opposed to intentional takings), a Level B harassment taking occurs if the marine mammal has a significant behavioral response in a biologically important behavior or activity. For further discussion on this issue, please refer to RTC MMPAC13.

Other Studies

Comment SIC58: The analysis relied too heavily on Ridgway *et al.* (1997), which may not be a good model for the onset of TTS due to SURTASS LFA operations (not 1 second signal). The results of Ridgway *et al.* (1997) were based on exposure to sounds of different frequencies (3, 20, and 75 kHz) from those generated by SURTASS LFA sonar (0.1 to 0.5 kHz).

Response: Ridgway *et al.* (1997) and Schlundt *et al.* (2000) data can be used to extrapolate responses to the SURTASS LFA sonar signals, using established methods of adjusting for differences in signal duration. This was explained in detail in the Final EIS Subchapter 1.4.2.1.

Ridgway *et al.* (1997) was expanded, peer reviewed, and published as Schlundt *et al.* (2000). These results are applicable to the LFA frequency range. As stated in the Final EIS on page 1–27,

Schlundt *et al.* (2000) documented temporary shifts in underwater hearing thresholds in trained bottlenose dolphins (*Tursiops truncatus*) and white whales (*Delphinapterus leucas*) after exposure to intense one-second duration tones at 400 Hz, and 3, 10, 20, and 75 kHz. Of primary importance to this deliberation are the LF-band tones at 400 Hz. At this frequency, the researchers were

unable to induce TTS in any animal at levels up to 193 dB re 1 micro Pa, which was the maximum level achievable with the equipment being used.

Comment SIC59: One organization commented that NMFS' reliance on the Navy's TTS studies in San Diego, which suggest that TTS occurs in bottlenose dolphins exposed to a single, 1-second pure tone occur at levels above 190 dB, is unwarranted because: (1) High ambient noise levels exist in San Diego Bay (i.e., the research used masking thresholds of some 20–40 dB above acoustic sensitivity; a technique that has long been known to audiologists to result in less observable threshold shifts and thus weaker damage risk criteria); (2) Extrapolation from two species of odontocetes to other species is unjustified; and (3) Extrapolation from 1-second pure tone pulses to the broadband 100-second pulse of LFA is unjustified.

Response: (1) As stated in Schlundt *et al.* (2000), masking noise was used to provide a leveling effect in the presence of variable ambient noise in San Diego Bay, and this masking noise may have caused larger shifts than may have been seen without the masking noise. The scientific evidence from the audiologists (unidentified by the commenter, but assumed to be those referenced in Schlundt *et al.*, 2000) does support the theory concerning less observable threshold shifts for humans (Parker *et al.*, 1976; Humes, 1980). Recent research reported by Finneran *et al.* (2001) at the 2001 Meeting of the Acoustical Society of America in Ft. Lauderdale, FL does not support this theory for marine mammals. That study tested two dolphins in a low noise environment (tank) for 3 and 4.5 kHz with a 1-second pure tone. Subjects demonstrated behavioral changes at 190 dB. Preliminary results indicate no TTS at 4.5 kHz for either subject at received SPLs of 200 dB. The results of Schlundt *et al.* (2000) are applicable because (1) they are supported by recent scientific research and (2) marine mammals live in a noisy environment, one that closely resembles the environmental conditions of the study.

(2) Utilizing the results of this study for other species based on two species is justified. The use of indicator species, and extrapolation of results, is an accepted scientific practice, especially if the results are applied in a conservative manner. First, for the 400-Hz signal, no TTS was observed at the highest level of exposure (193 dB). Second, the onset of TTS is not considered by NMFS to be injury (although the Navy has considered any SPL above 180 dB to be a conservative level for determining injury). Therefore, PTS (or injury) would occur above 193 dB. Third, the injury criterion for SURTASS LFA sonar was not based solely on this study (see the Final EIS Subchapter 1.4). Finally, for the purposes of the SURTASS LFA sonar EIS analysis and the proposed mitigation protocols, the level for potential injury was set at 180 dB—a conservative level.

(3) The extrapolation from a 1-second pure tone to a broadband 100-second ping is discussed in previous RTCs. In addition, LF shipping noise is broadband, SURTASS LFA is not. SURTASS LFA sonar bandwidth is very limited (approximately 30 Hz), and the signals do not remain at the same frequency for more than 10 seconds.

Comment SIC60: In a 5-year report submitted to NMFS in March 1998, the Ocean Mammal Institute (OMI) concluded that when boat engines reach an RL of 120 dB whales swim two to three times faster than around quieter boats. This corroborates the large body of literature indicating that whales avoid sounds at about 115–120 dB.

Response: This concern was discussed in the Final EIS (RTC 4–4.25). In a summary posted on the OMI website, researchers reported that humpback whales changed their behavior when approached by boats with 200 hp engines, which produced RLs of 120 dB at 100 m (328.1 ft) at 2,000 Hz. A review of the actual report submitted to NMFS shows that the report does not support the claim made in the comment. Furthermore, Au and Green (2000) concluded,

* * * the whales appeared to swim fastest in response to the loudest boat. However, it is difficult to know exactly what a pod of humpback whales reacts to. The mere presence of a boat moving into their vicinity could cause serious reactions. Besides the levels of the underwater sounds and the complexity of the sound, the size and shape of a boat may also be important factors.

At close ranges sound intensity and spectral content change rapidly, providing clues to the whales that something is approaching rapidly, thus eliciting an avoidance response, which is not necessarily based on sound level. The OMI website supported this when it stated, ''Data analysis showed that the loudness of the boat's engine and the rate of change in noise level significantly affected the whales' swimming speed.'' It also stated, ''Other researchers have noted that whales appear to respond to rate of change in noise level.'' In other words, it is just as likely that the whales got out of the way because the boat was rapidly approaching them, rather than the level of sound from the engine. A review of the report showed no scientific research control for the speed and course of the approaching boat relative to the whales. Despite the conclusions in Green (1998) and Au and Green (2000), the OMI website presented only one of several potential conclusions when it stated, ''These studies show that whales'' swimming speed and amount of time underwater is affected by the noise level of boats that approach them.''

LFA will not present a rapid ''rate of change'' to marine mammals because of the boat's slow speed of approximately 3 knots. Additionally, the frequency of the engine noise used to elicit responses from the whales in the Au and Green (2000) study was substantially higher than that of the SURTASS LFA sonar's signal. Therefore, the results from the 5-year report concerning humpback whale reactions to boat engine noise submitted to NMFS by OMI (Green, 1998) and later published (Au and Green, 2000) are not directly comparable to the scientific analyses in the Final EIS.

Comment SIC61: Evidence suggests the potential for serious physical and behavioral effects at exposure levels below 180 dB and widely accepted research demonstrates biological disturbance at far lower levels (115–120 dB).

Response: In order to determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals (below 180 dB), biological risk standards were defined with associated parameters of exposure. Based on the MMPA (Final EIS Subchapter 1.3.3.1), the potential for biological risk was defined as the probability for injury or behavioral harassment of marine mammals. In this analysis, behavioral harassment is assumed to be a significant change in a biologically important behavior, which is consistent with the NRC's characterization (NRC, 2000). The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The risk continuum was developed as a measure of the biological risk for behavioral response. The measurement parameters for determining exposure were RL in decibels, length of the signal (ping), and number of pings received. Simple disturbance does not constitute injury or biologically significant behavior modifications.

Comment SIC62: When evaluating the TTS study by Schlundt *et al.* (2000), the Navy downplays individual variability where the small sample size clearly

weakens the general application of the results.

Response: Schlundt *et al.* (2000) is only one of several papers and research cited in the discussion of TTS in the Final EIS. See the Final EIS Subchapter 1.4.2.

Comment SIC63: On page 45, the LOA Request states, ''Marine mammal biologists and marine bioacousticians agreed that, based on the best available data, including results from the LFS SRP, and best scientific judgment, the SURTASS LFA biological risk standards for marine mammals (particularly mysticetes—baleen whales) used for this study are those discussed below.'' One commenter notes that a significant number of marine mammal biologists and marine bioacousticians do not agree with this.

Response: The SURTASS LFA sonar EIS analysis, based on both scientific research and literature reviews, utilized a risk function methodology to assess the biologically significant behavior of marine mammals. This process was developed by leading experts in the fields of acoustics, bioacoustics and marine biology, and was reviewed by NMFS. Because this methodology is novel, academic discussion is both anticipated and desired. The NRC has proposed the use of risk function (concerning the definition of Level B harassment under the MMPA). NRC (2000) stated, ''the ultimate long-term goal should be a risk function involving intensity and duration of exposure (see Miller, 1974) for each species, but our current lack of knowledge impedes this goal.''

Comment SIC64: Why was TR 3 (Summary Report on the Bioeffects of Low Frequency Waterborne Noise) missing from the Final EIS?

Response: As explained in Final EIS (RTC 1–3.11), none of the three TRs were missing from the Final EIS. As stated in the Final EIS on page xii, the TRs are incorporated by reference in accordance with 40 CFR 1500.21 and are available upon request. A copy of TR 3 was provided to the commenter on August 24, 1999, during the comment period for the Draft EIS.

Impact Analysis/Modeling

Comment SIC65: The conversion of dB (air) to dB (water) is 26 dB, not 60 dB.

Response: Sound levels in air are not the same as sound levels in water. In order to compare sound (or acoustic) intensity in air against that in water, one must consider the difference in reference standards (26 dB) and the difference in impedance between air and water (35.5 dB), a 61.5–dB difference. To produce equivalent acoustic pressure level for air, 61.5 dB must be subtracted from the sound intensity in water. In other words, 100 dB in air would be equivalent to 161.5 dB in water. See Final EIS (RTC B–1.1) and Appendix B Subchapter B.3.2 for more information.

PE/AIM Simulations

Comment SIC66: It appears from the data provided in the Navy's Final EIS that the Navy's researchers ran their modeling program an insufficient number of hours. Whereas LFA would transmit a proposed 72 hours during each tour of duty, the LFA model seems to have been run only 32 hours—the product of a 60-second ''ping'' repeated every 15 minutes for 20 days (Compare Final EIS at 2–8 with Final EIS at 4.2–22, 4.2–38). The difference between these two figures becomes more salient when tours of duty are multiplied, to reflect the proposed deployment. In sum, it would appear that, by this single error alone, the Navy has underestimated the overall impact of its system by a factor as great as 2.25, at least some of which would be reflected in additional numbers of animals ''taken.'' Some part of this multiplier would also be reflected in higher equivalent received levels for animals exposed a multiple of times—a concern for NMFS in calculating negligible impact.

Response: The modeling program (AIM) was run with a sufficient number of hours to accurately reflect historical and expected SURTASS LFA operations. Page 4.2–22 of the Final EIS erroneously stated that a 20-percent duty cycle was used in the AIM calculations. AIM modeling was independent of duty cycle and signal duration, as they are embedded in the risk function upper limit calculation. The AIM modeling was based on a maximum received pressure level per transmission basis, independent of the duration of an individual ping. The transmit pressure level used to calculate the received level at the animal was the absolute maximum of all the individual elements in a given transmission. Subchapter 1.4.2.1 addresses how signal duration is accounted for in the selection of the 180 dB upper limit of the risk function, and explains why a 100-second duration criterion for SURTASS LFA sonar of 180 dB is appropriate and conservative. Typical durations for a transmission vary between 6 and 100 seconds, but the peak received pressure level at an individual animal is unaffected by this duration. Thus, the AIM modeling was based on two fundamental quantities: (1) The peak received pressure level at an animal's location, and (2) the number of pings received. Processing AIM results using the risk continuum (Subchapter 4.2.6.3) incorporated signal duration (rooted in the risk function). Therefore, varying the duration of a given transmission (and thus the duty cycle) is not directly related to the number of transmissions, nor the number of takes for a given operation, but has been accounted for in post-AIM analysis. Thus, even though page 4.2–22 of the Final EIS was in error, the AIM model runs presented in the Final EIS are correct. The take estimates presented in the Final EIS Tables 4.2–10 through 4.2–12 are not underestimated, but are valid, as explained in the Final EIS, and conservative (see Subchapters 1.4.3, and 4.2.7.5).

Furthermore, the Navy will rerun the models at least once prior to operating in a specific geographic region in order to derive new take estimates. The Navy will provide this information to NMFS that will reflect estimates for those areas requested for upcoming SURTASS LFA operations, in accordance with the annual LOA.

Comment SIC67: The accuracy and reliability of the input data are missing from these sophisticated models.

Response: The reliability and accuracy of the modeling input parameters were reviewed and cross-checked with marine biology experts. For more details, see the Final EIS (RTCs 4–3.13 and 4–3.14).

Comment SIC68: Calculations (Draft EIS/Final EIS) are based on the assumption that marine mammal species and stocks are uniformly or randomly distributed. Considerable evidence exists to indicate that this distribution is neither uniform nor random, but determined by biological and physical oceanographic features and could lead to an underestimate of effects.

Response: According to the Navy, it agrees that the distribution of marine mammals in the wild is neither uniform nor random. This was an integral part of the acoustic modeling. For each model site, the area was divided into sections or grids (See Appendix A of TR 2). Each section was assigned an animal weight or density for each of the modeled species. Within each of these sections, the distribution was random. Species distributions for each of the 31 sites are provided in Appendix C of TR 2.

Comment SIC69: The Navy should rerun its AIM simulations using varying estimates for its monitoring program to simulate more realistic conditions. Take calculations should be adjusted so as

not to include monitoring detection of species.

Response: This has already been done. Under Alternative 1, modeling was used to analyze each site and species both without and with monitoring mitigation. See Final EIS Table 4.2–10. The AIM simulations utilized conservative values for monitoring mitigation effectiveness. The modeling did not place a high reliance on visual and passive acoustic monitoring. The effectiveness of the HF/M3 sonar was limited to a conservative value of 50 percent. The combined efficiency of monitoring by all three methods used in the modeling was 66 percent. Based on testing of the HF/M3 sonar, its efficiency for a 10-m (32.8-ft) whale at 1,000 m (3280.8 ft) is over 95 percent. If the ''take'' numbers were recalculated, as suggested, the percentages of potentially affected marine mammals would decrease, not increase. For more information, see the Final EIS Subchapters 2.3.2.2 and 4.2.7.1.

Comment SIC70: The SACLANTCEN report states that Cuvier's beaked whale specific sounds are not known, yet the Final EIS claims that passive acoustic devices have a 25 percent probability of detecting them.

Response: The Final EIS Subchapter 4.2.7.1 at 4.2–49 stated: ''The *USS SEAWOLF* Shock Testing EIS (Navy, 1998) proposed using a broadband passive detection system. With this system, the *USS SEAWOLF* EIS assumed the following estimates for passive acoustic detection (1.0 = 100 percent):

Sperm whales and *Stenella* dolphins: $ME_{passive} = 0.75$

Other odontocetes except Cuvier's beaked whales: $ME_{passive} = 0.50$

Baleen whales and Cuvier's beaked whale: $ME_{passive} = 0.25$

Because the SURTASS passive array has limited bandwidth, the lowest (conservative) value of 0.25 was used for $ME_{passive}$.''

Moreover, it should be noted that the fact that Cuvier's beaked whale species sounds are not known does not imply that they do not vocalize. It only implies that their sounds cannot necessarily be distinguished from other vocalizing cetaceans. However, the Navy's passive detection monitoring is not species-specific. The detection of *any* sounds identified to be from a marine mammal will require adherence to the mitigation protocols in accordance with Chapter 5 of the Final EIS.

Comment SIC71: How were ship movements during the modeled exercise factored into the calculation?

Response: The AIM simulation can calculate the projected sound field from the SURTASS LFA source in either stationary or moving mode. For the calculations in the Draft and Final EISs, the source vessel was moving at 3 knots with the ship track being a triangle, eight hours per leg (3 legs per day) with mission durations of 20 days/24 hours per day, as noted in the Draft and Final EIS Table 4.2–6 and TR 2 Table 3–2.

Comment SIC72: The swim speed, interval of course change, angle of course change, dive times, distribution, abundance, and density inputs to AIM are not site-specific.

Response: Swim speed, interval of course change, and angle of course change are the same for all species at all sites. However, diving regime (depth ranges and percent of time) are based on individual species. Population densities are determined for each site by species by season. These data are provided in the Final EIS Subchapter 4.2.2.2 and TR 2.

Comment SIC73: Beaked whales were not included in the Draft EIS or any modeling scenarios (sites).

Response: The Draft and Final EISs (Table 4.2–4) included beaked whales at 22 of the 31 modeled sites.

Comment SIC74: The PE model did not indicate the effects of infrasonic (0.1 to 15 Hz) sound produced by LFA.

Response: The SURTASS LFA sonar transmit array is not physically capable of producing infrasonic signals.

Single Ping Equivalent (SPE)

Comment SIC75: The Navy does not adequately deal with the exposure of marine mammals to repeated LFA signals, which could increase and intensify the resulting impacts.

Response: The SPE, as defined in the Final EIS Subchapter 4.2.3.1, is the methodology used during the acoustic modeling of potential impacts to marine animals from exposure to LF sound. This method estimates the total exposure of each individually modeled animal, which was exposed to multiple pings over an extended period of time. This is accomplished by the summation of the intensities for all received pings into an equivalent exposure from one ping, which is always at a higher level than the highest individual ping received.

Comment SIC76: There is no scientific justification for the 5 $\log_{10}$ (N) rule for assessing behavioral disturbance risk of multiple exposures. An additive effect of exposure is more appropriately modeled as 10 $\log_{10}$ (N). The Final EIS greatly underestimates the number of marine mammals that will be harassed due to multiple exposures at low levels.

Response: The National Institute for Occupational Safety and Health (NIOSH) has recently changed their ''exchange rate''; that is, the drop in an acceptable noise level for increased durations. The former standard was 5 dB, and the current standard is 3 dB. The section on exchange rate concludes with this statement:

> The 3–dB exchange rate is the method most firmly supported by the scientific evidence for assessing hearing impairment as a function of noise level and duration, whether or not an adjustment is used for intermittent exposures. (NIOSH, 1998)

Additionally, at a recent meeting of the Acoustical Society of America, the existing data for TTS in marine mammals were compared for duration and received level. These data also mostly fit along the 3–dB exchange rate.

The 3–dB exchange rate is based on the equal energy assumption and is equivalent to the 10 $\log_{10}$ (duration or N) formulation suggested by the commenter. However, this formulation is based on continuous noise exposure. Interruptions in the noise exposure allow for recovery. Clark *et al.* (1987) found that ''intermittent exposures produced less temporary and permanent hearing loss and less cochlear damage than continuous exposures of equal energy.'' If these TTS results also apply to behavior, it suggests that the intermittent nature of the SURTASS LFA source justifies the 5 $\log_{10}$ (N) formulation.

Furthermore, the existing data on long-term noise exposure in humans show that the effect drops from 10 $\log_{10}$ (duration) to 3.3 $\log_{10}$ (duration) when the total exposure drops to 8 hours. There are also data from impulsive noise exposure that indicate a 5–dB change in threshold is appropriate for a 10-fold change in the number of exposures. This is equivalent to 5 $\log_{10}$ (N).

These data are for TTS, and therefore not directly applicable to behavioral responses. However, the range of known values are 3.3 $\log_{10}$ (N), 5 $\log_{10}$ (N), and 10 $\log_{10}$ (N). Picking the intermediate value may represent the best estimate based on partial knowledge. Picking the extreme value represents the ''worst case'' scenario. It is conservative, but may be less accurate.

Another argument for a value less than 10 $\log_{10}$ (N) is that most animals that are exposed to multiple pings are at a reasonable range from the ship. These animals are moving through the water column, and the acoustic path of the signal for CZ propagation is a relatively narrow band. As the animals move up and down in the water column, they are unlikely to experience multiple sequential loud pings. The model allows

for non-sequential loud pings, even pings separated to be considered additive, which is a conservative approach.

Comment SIC77: The SPE approach appears to mask potential effects of repeated exposure at lower levels, such as abandonment of feeding and breeding areas or resonance effects. Treating the effects of a single ping at high levels close to the ship as equivalent to multiple pings at lower levels ignores the impact of multiple pings at lower levels taking place at substantial distances.

Response: The SPE approach does not mask potential effects of repeated exposures at lower levels because the number of pings required to equate to 180–dB exposure was modeled in the analysis. This conservative approach demonstrated that the potential impact on any stock of marine mammals from injury is considered negligible, which included consideration of multiple impacts at lower levels that equated to 180–dB exposure.

Comment SIC78: Undetected animals could be subject to repeated pings within the 180–dB zone. If an animal is detected within this zone after LFA sonar transmissions have been initiated, it will not be possible to know how long the animal has been subject to high RLs. This animal should be assumed to be injured.

Response: As stated in the Final EIS and the application, all marine mammals that receive a SPL of 180 dB, or greater, are conservatively assumed to be injured.

Cumulative Impacts

Comment SIC79: The Final EIS section on cumulative effects does not provide the necessary analyses to assess the combined effect (all other human-related factors) on marine mammals. The EIS discussion of cumulative impacts does not mention other nations' deployment of LFA systems. Cumulative impacts analysis cannot compare LFA sonar to shipping. One organization is concerned that the multiple deployments of LFA sonar in conjunction with potential deployment of other nation's LF sonar has not been addressed and may have a devastating cumulative effect on marine mammals.

Response: Cumulative impacts that are reasonably foreseeable were considered by the Navy in the preparation of the EIS (Subchapter 4.4) and are discussed in the Final EIS Subchapter 4.4 and RTCs 4–10.1, 4–10.3, 4–10.4, and 4–10.6. Operating more than a single SURTASS LFA sonar source within a single ocean basin is unlikely. However, the Navy did analyze the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that could potentially be affected. Since no more than two SURTASS LFA sonars are expected to be deployed under this action, no further analyses are required. Moreover, NMFS is unaware of the use by other nations of SURTASS LFA sonar, or other systems that use a LF source (*i.e.,* 1 kHz or below), except for the SACLANTCEN (NATO) TVDS system whose frequency ranges are 450 to 700 Hz for the LF component and 2.6 to 3.4 kHz for the mid-frequency component (SACLANTCEN, 1998). The Navy has no plans to operate with this NATO system. Moreover, if the TVDS system is ever used by other nations, use of this single system and the 2 planned SURTASS LFA systems for the period of these regulations would not exceed the number of LF systems analyzed in the Navy's Final EIS. For further discussion on this issue, please refer to RTC MMPAC33.

Comment SIC80: The United States will not be able to control the deployment of LFA technology by other nations that may not limit their routine usage to levels safe for marine life.

Response: NMFS and the U.S. Navy have no control over activities by other nations. However, while LF sonar technology, in one form or another, may be deployed by other nations, such deployments remain speculative at this time.

Comment SIC81: Despite the fact that LFA signals are a minor part of the increasing oceanic ambient noise, the LFA transmissions nevertheless stand out from this increasing hum. Two commenters state that recorded LFA transmissions at 1,000 miles (1609 km) during acoustic studies highlight this.

Response: Because of its short duty cycle and limited number of systems to be deployed, SURTASS LFA sonar transmissions will not add measurably to the increasing ambient noise in the oceans, and will not be perceptible in most of the ocean basins in which it is deployed. As to the acoustic studies that reported recording of SURTASS LFA at 1,000 miles (1609 km), there was no indication as to the RL of this signal from the Magellan II project except a comment that the researcher was ''forced to jump up and turn down the speaker.''

In later research he stated that he recorded strong long duration sounds in the 3 kHz range coming from the direction of the *R/V Cory Chouest* at a distance of about 40 mi (64.4 km). Since the SURTASS LFA sonar source can not transmit at mid-frequencies, it was not the SURTASS LFA sonar signal from the *R/V Cory Chouest.*

Comment SIC82: The Navy's calculations strongly underestimate the potential impacts of its noise on an animal's lifetime productivity rate.

Response: The Navy's Final EIS, Subchapter 4.2.7.5 (Biological Context) addresses the potential for long-term effects, such as loss of part of a breeding season, loss of part of a foraging season, and reduction of individual animals' reproductive success. Since the conclusion reached from the analyses done in conjunction with the development of the Final EIS, including the LFS SRP field research, is that the potential impact on any stock of marine mammals from injury due to SURTASS LFA sonar operations is negligible, the primary potential effect for marine mammals is a significant change in a biologically important behavior. For this to translate into impacts on an animal's lifetime productivity rate, the SURTASS LFA sonar would likely need to be operated in a concentrated breeding area throughout an entire breeding season, or operated in a feeding area for months at a time. System operational plans and restrictions preclude these scenarios: (1) All operations will be outside 12 nm (22 km) of any coastline or offshore island, and far enough away from designated offshore biologically important areas to limit SPLs in those areas to below 180 dB; (2) operations will not occur in places and during times of the year when marine mammals are engaged in critical activities (as frequent system shutdowns due to animal detections would negate the system's operational utility); (3) mission length will not exceed 20 days; and (4) no more than 12 percent of any marine mammal stock may incur Level B harassment during the time period of validity for each LOA (1 year). Therefore, NMFS believes the Navy has not underestimated the potential impacts on the lifetime productivity rates for marine mammals.

Comment SIC83: In the Final EIS Subchapter 4.2.7.5 on biological context, the effect of the impact for a 20-day mission over 20 years of breeding seasons per animal were discussed. The model used is incorrect because there was only one mission per animal per 20-year period. Because there are ''at least three missions per year per area'' there will be a greater intersection of missions on breeding seasons over 20 years, not just one.

Response: The discussion in Subchapter 4.2.7.5 was not intended to

be a model. For illustration purposes, the intersection of only one mission per animal over a 20-year period is a valid assumption. First, there will be only two SURTASS LFA sonar vessels deployed during the upcoming 5-year period with each one expected to be located in a different ocean basin and, therefore, only a limited number of active sonar operations (normally 12 missions/year). Second, marine mammal breeding is seasonal, thereby further limiting the period when marine mammals could potentially be exposed during this critical period. Moreover, as noted in RTC SIC82, it is reasonable to expect that it is unlikely that any single marine mammal will receive an appreciable sound exposure level from SURTASS LFA sonar that will cause significant changes in biologically important behavior during any single mission. Based on the modeled underwater acoustic RLs (AIM analyses results), presented in the Final EIS Subchapter 4.2 EIS, the data presented in Figures 1–5a through 1–5c in the Final EIS, illustrate that the preponderance of all modeled RLs fall below the 155 dB level. Therefore, even if the Navy should choose to conduct missions within the same year in the same area, for the above reasons NMFS believes that SURTASS LFA sonar would not have reproductive level effects on marine mammals. Finally, as explained in detail later in this document (see RTC MMPAC23), NMFS will review the Navy's LOA application to ensure that the Navy has planned active SURTASS LFA sonar missions to avoid, to the extent practical, those critical areas and times of the year when marine mammals are concentrated to carry out important biological activities.

Non-Marine Mammal Impact Concerns (NMMIC)

Comment NMMIC1: The EIS did not include sea snakes because they primarily inhabit inshore waters.

Response: Because sea snakes primarily inhabit shallow areas where SURTASS LFA sounds will attenuate to low levels and because sea snakes have little to no sensitivity to LF sound either from hearing or non-auditory effects, it was appropriate for the Navy to eliminate them from further consideration in the Final EIS.

Comment NMMIC2: The potential effects cannot be predicted and/or were not considered in the analysis for fish, diving birds, invertebrates, plankton, and other non-mammalian species (such as transatmospheric life forms). Soft tissue damage in fish was not considered. No studies done for fish, plankton, and sea turtles. What is the effect of LFA sonar on the marine mammal food chain, such as zooplankton and fish?

Response: The potential effects of SURTASS LFA sonar on fish and prey species are covered in the Final EIS Subchapters 4.1.1 and 4.2.7.6; sea turtles are covered in the Final EIS Subchapter 4.1.2; invertebrates are covered in the Final EIS Subchapter 3.2.1.1; plankton are addressed in the Final EIS Subchapter 3.2.1; and diving birds are discussed in the Final EIS Subchapter 3.2.1.2. As previously stated, the SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound is on the order of 180 to 190 dB. Because the potential for injury to marine mammals, sea turtles, and fish stocks was set at a SPL of 180 dB, the Navy did consider tissue damage for these species. The Final EIS did include life forms that exist both in the atmosphere and the ocean, including pinnipeds, sea turtles, diving sea birds, and humans. As suggested by the commenter, information on other ''transatmospheric'' life forms is available at http://www.roswellrods.com

Comment NMMIC3: Subchapter 4.1.1.1 of the Final EIS incorrectly states that large pelagic fish (such as tuna) spend most of their time near the surface.

Response: The Final EIS concluded that a negligible portion of any fish stock will be present within the 180-dB sound field and thus the potential for injury to fishes is limited. Therefore, even if pelagic fish do not spend most of their time near the surface, it will not change the determinations made in the Final EIS.

Comment NMMIC4: The analysis of the potential impact to fish in the Final EIS is limited. There is no discussion at all of the potential impacts on fish eggs. The commenter then goes on to state, ''There is no basis for assuming that the only injurious effects on fish or fish eggs will take place at 180 dB or higher.''

Response: The effects on fish and fish eggs are discussed in the Final EIS subchapters 3.2.2, 3.3.1, 4.1.1, 4.3.1, and RTC 3–2.5, 4–1.6, 4–1.7, and 4–1.10.

Comment NMMIC5: The Navy's conclusions on non-significant impact on fish, sharks and sea turtles and their habitats are based on a number of assumptions and not on empirical evidence. The Navy gives only a cursory look at the potential impact to fish.

Response: Subject matter experts provided the analyses of impacts on fish, sharks, and sea turtles. Much of their analyses are based on peer-reviewed research, as noted here. Where assumptions were necessary because of lack of scientific data, they were made by the subject matter experts and were conservative. There are extensive discussions on fish, sharks and sea turtles in the Final EIS in Subchapters 3.2.1.2, 3.2.2, 3.2.3, 4.1.1, 4.1.2, and 4.3.1. The conclusions are based on the research of numerous recognized scientists. Examples of cited research include Bartol *et al.* (1999), Cox *et al.* (1986a), Cox *et al.* (1986b), Cox *et al.* (1987), Enger (1981), Hastings *et al.* (1996), Klimley and Beavers (1998), Lombarte and Popper (1994), Popper and Clarke (1976), Ridgway *et al.* (1969), Rogers and Cox (1988), Sand and Hawkins (1973), and Ye (1996).

Comment NMMIC6: In Comment 4–5.38, Dr. Popper, a coauthor in Hastings *et al.* (1996), stated that there indeed was delayed sensory damage that was not an artifact of the sacrificing schedule.

Response: Dr. Popper co-authored and reviewed the sections of the Final EIS concerning potential impacts to fish (See Final EIS page 14–2). The possible inconsistency noted in the comment, however, is not relevant because the study exposed the oscar (*Astronotus ocellatus*) to a 300-Hz, 180-dB signal for a minimum of 1 hour. The LFA signal's maximum length is 100 seconds with no more than 10 seconds at any single frequency. Therefore, at this time there is no reason to presume that the limited damage found in Hastings *et al.* (1996) would occur with the much shorter LFA signal. Based partially on the reference, the Final EIS conservatively concluded that it is reasonable to consider hearing loss or injury to fishes from SURTASS LFA sonar transmissions to be limited to the region ≥ 180 dB. However, no more than a negligible portion of any fish stock would be present within the 180-dB sound field at any given time.

Comment NMMIC7: The Navy has dismissed the potential impact to fish, turtles, and humans from resonance of cavities and swim bladders. In Final EIS (RTC 3–2.5), it is not evident why larger fish will not be affected by LFA. In the Final EIS (Subchapter 4.1.1.1) concerning non-auditory injury to fish stocks, the Navy stated, ''Therefore, it is not expected that resonance of the swim bladder would play a significant role in response to LF sound (ARPA, 1995).'' This reference is for the ATOC system, which has a frequency of 75 Hz. This does not correspond to the frequency to be used by SURTASS LFA sonar of 100 to 500 Hz. Therefore, the Final EIS conclusions are not correct.

Response: The potential for impacts due to resonance of cavities and swim bladders was discussed in the Final EIS

(RTCs 3–2.5, 4–4.15, and 4–6.24). RTC 3–2.5 stated that fish are not expected to be significantly affected by resonance because the SURTASS LFA signal is lower in frequency than the resonance for most fish. However, it did recognize that the resonance frequencies for some of the larger fish may be in the range of SURTASS LFA. For example, the cod has a resonant frequency of 400 to 560 Hz. However, in order to provide additional protection to marine mammals from potential injury, the Navy has agreed to apply interim operational restrictions that include a maximum frequency of 330 Hz. This will provide additional protection for fish as well.

The SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound is on the order of 180 to 190 dB (Cudahy and Ellison, 2002). Because the potential for injury to marine mammals, sea turtle, and fish was established by the Navy at an SPL of 180 dB, and because the permissible exposure level for humans was set even lower at 145 dB (a value based on aversion reactions, not injury), resonance from LFA sonar is even less likely to impact humans.

The frequency of ATOC is lower than that of SURTASS LFA, and therefore the citing of the ATOC EIS may have been inappropriate. However, the conclusion remains the same.

Comment NMMIC8: It is a matter of concern that the Final EIS makes no attempt to calculate and/or discuss that swimbladders (of fish) vibrate with the greatest amplitude at stimulation frequencies close to the base frequency and at frequencies corresponding to the 2nd and 3rd harmonic.

Response: Resonance of fish swim bladders is discussed in the Final EIS Subchapter 4.1.1.1 and RTC 3–2.5. See Final EIS (RTC 4–6.42) for discussion on harmonics. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion that tissue damage will not occur at SPLs below 180 dB.

Other Concerns (OC)

Comment OC1: What is the impact on the whale watching industry?

Response: SURTASS LFA sonar operations are not expected to have any impacts on the whale watching industry. For further information, see the Final EIS Subchapters 3.3.2.3 and 4.3.2.1.

Comment OC2: In RTC 4–9.18 of the Final EIS concerning swimmers and snorkelers at or near the surface, were surface ducts taken into account?

Response: Yes.

Comment OC3: Divers, swimmers and children in the water are at risk from LFA sonar.

Response: Humans in the water are not at risk from SURTASS LFA sonar transmissions. The Navy sponsored research to study the potential effects of LF sound on humans in the water. Based on this research, in conjunction with guidelines developed from psychological aversion testing, the Navy concluded that LF sound levels at or below 145 dB would not have an adverse effect on recreational or commercial divers. See the Final EIS Subchapters 1.4.1 and 4.3.2.1 for additional details. As discussed in the Final EIS Subchapter 5.1.2, SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB.

Normally, swimming and snorkeling occur in areas that extend from the surface to depths not greater than 2 m (6.5 ft). Applying acoustic theory and detailed measurements to these depths, there would be substantial sound transmission losses occurring in the top layer of water (about 1.8 m (6 ft)) where swimmers would most likely be found. Sound fields in this layer of water would be about 20 dB less than the sound fields in adjacent deeper water. This is discussed in the Final EIS Subchapter 4.3.2. It is unlikely that a swimmer or snorkeler will ever hear the LFA signal.

Comment OC4: What is the impact to coastal communities via coastal sound absorption? What is the impact to shore communities from invasion by animals (sea otters and pinnipeds), which are being driven out of the water to escape noise? Mitigation will not work—because LF waves penetrate into the shoreline.

Response: The SURTASS LFA sonar signal should not be confused with LF-radio waves used in communication or biologics (e.g., the Sausalito humm). They do not operate similarly. Because SURTASS LFA sonar transmissions will be restricted to SPLs below 180 dB at a distance of 12 nm (22.2 km) from shore and 145 dB within known dive sites, due to significant sound attenuation and absorption characteristics in shoaling and shallow water, there will be no impacts to onshore human coastal communities. Similarly, significant sound attenuation in shoaling waters would preclude the offshore sounds from SURTASS LFA sonar from affecting coastal marine mammals. This was illustrated during Phase II of the LFS–SRP when the SURTASS LFA sonar source was offshore California.

Habitat Concerns

Comment HC1: One organization believes that the Navy is unaware of the effect that the LFA sonar system will have on cetaceans' prey, as indicated in section 4.7.6 of the application. Such uncertainties of the effects the sonar system will have on cetaceans indicate the Navy does not know if the system will have no effect or fatal effects on cetaceans; therefore, it should not be permitted to conduct (operate) the LFA sonar system.

Response: Section 4.7.6 of the Navy application does not state that the Navy is unaware of the impacts of the system on prey species. It states that the potential for indirect effects (including prey availability) for marine mammals is very low. Information on the potential impacts to fish species can be found in the Navy Final EIS, Subchapter 4.1.1. Most benthic and pelagic invertebrate species that are marine mammal prey species are unlikely to be affected by LFA sonar since they do not have organs or tissues susceptible to acoustic sound.

Mitigation Concerns (MIC)

Geographic Restrictions

Comment MIC1: It is not clear that the 12-nm limit (180–dB restriction) would result in the least practicable adverse impact on marine mammals in these areas. If SURTASS LFA sonar is a long-range system, it is not clear why the Navy would need to operate at distances as close as 12 nm (22 km) from shore since presumably LFA sonar has ocean-basin detection capabilities. As a means to have the least practicable effect on marine mammals, it should be restricted to waters further offshore than 12 nm (22 km).

Response: The geographic restriction is for the SURTASS LFA sound field of 180 dB, not the location of the vessel. While the U.S. Navy plans to operate mainly in waters significantly greater than 12 nm (22 km) offshore, it should not be precluded from operating in waters near 12 nm (22 km) from shore, provided the SPL does not exceed 180–dB at a distance of 12 nm (22 km) from any coastline. For this reason, NMFS has not implemented the recommended restriction on SURTASS LFA sonar operations. However, because SURTASS LFA sonar transmissions will be restricted to SPLs below 145 dB within known dive sites, the LFA vessel will remain at distances greater than 12 nm (22 km) from shore in most situations.

Comment MIC2: Prior to each exercise, the marine mammal safety zone will be measured to determine the distance from the source to the 180–dB isopleth. Because oceanographic

conditions will change over the course of an exercise (up to 20 days), it is unlikely that these characteristics will remain constant. What specific model will the Navy use to determine SPLs for monitoring mitigation? Why does RTC 2–1.4 (in the Final EIS) state that the 180–dB mitigation zone was determined using standard spherical spreading formula?

Response: Please refer to RTC AC12 on distances to the 180–dB isopleth. It is understood that oceanographic conditions change over time and the Navy has provided provisions for this in the SPL monitoring protocols. Subchapters S.4.9, 2.3.2.1, and 5.1.3 of the Final EIS state that the SURTASS LFA sonar sound field will be estimated prior to and *during* operations using near-real-time environmental data and underwater acoustic prediction models. Subchapter 5.1.3 in both the Draft and Final EISs state that these sound fields will be updated every 12 hours, or more frequently, when meteorological or oceanographic conditions change.

These models are similar to the Parabolic Equation (PE) Model (Version 3.4), which was used in the Final EIS to predict transmission loss of the SURTASS LFA signal under various environmental conditions. For more information see the Final EIS Subchapter 4.2.2.1.

Within 1 km (0.54 nm) of the array, transmission loss is dominated by spherical spreading; therefore, the use of the standard spherical spreading formula is warranted. This is accounted for in the PE model used.

Comment MIC3: The Navy cannot predict the SPLs for the LFA mitigation zones and geographic restrictions at any depth and range in real time during operational deployment because of the complexity of oceanographic conditions and ''[s]ound transmission channeling is not predictable in the Navy's over-simplified theoretical models.''

Response: The Navy predicts SPLs for a complete range of underwater acoustic regimes (such as deep-water convergence zone, surface duct, and bottom interaction (see *Description of Acoustic Propagation* in this document)) in extremely complex oceanographic conditions, utilizing a number of very sophisticated models, with the most current environmental data available, as part of all ASW operations. This information is discussed in the Final EIS Subchapters 2.3.2.1, 4.2.2.1, and 5.1.3 and in TR 2 (Acoustic Modeling). Additionally, the acoustic modeling in the Final EIS used the PE Model (Version 3.4). This is only one of the acoustic models integrated into the SURTASS LFA sonar processing system that utilize the most up-to-date environmental data available. Oceanographic conditions (such as temperature and salinity verses depth, and sound speed) are updated with real-time data at least every 12 hours. According to the Navy, there were and will be no ''over-simplified theoretical models'' used either in the Final EIS analysis or during at sea operations.

Comment MIC4: The Navy should continuously monitor the 180–dB RL and the 1-km (0.54-nm) zone, recording and making available detailed findings of the difference between the two.

Response: As discussed in the Final EIS (RTC 5–1.3), SPLs will be calculated using onboard transmission loss models and near real-time environmental data before and during all SURTASS LFA active transmissions. Acoustic models will be updated at least every 12 hours. The range to the 180–dB RL will be mostly dependent upon the SURTASS LFA SL used, and the possibility of it exceeding 1 km (0.54 nm) is remote. However, any anomalous results will be recorded and reported as part of the LTM program in accordance with the LOA.

Comment MIC5: One organization is not convinced that research has shown that SURTASS LFA does not pose a threat to humpback whales at 180 dB. Therefore, it believes that the Navy should increase the safety zone to ensure that SURTASS LFA sound levels do not penetrate within 12 nm (22 km) of coastlines at any level.

Response: The SURTASS LFA sonar sounds will not exceed 180 dB at a distance of 12 nm (22 km) from any coastline. The selection of the 180–dB criterion is discussed in detail in the Final EIS Subchapter 1.4.2.1. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion. According to the Office of National Marine Sanctuaries (ONMS) consultation letter to the Navy dated May 15, 2001, ONMS requested that the SPLs generally not exceed 180 dB within the boundaries of National Marine Sanctuaries (NMS) and not exceed 145 dB seasonally for those NMS that are utilized by divers. Specific requirements for each NMS are provided in the referenced letter. To the extent that the recommendations by the ONMS were in regard to the conservation of marine mammals within Sanctuary boundaries, these recommendations have been adopted by NMFS and included as mitigation measures in this rule.

Offshore Biologically Important Areas (OBIAs)

Comment MIC6: Sound levels must be monitored from within OBIAs and other protected areas. The Navy should install hydrophones at the borders of the LFA mitigation zone to record all acoustic signals above 160 dB to verify the Navy's RL estimates.

Response: OBIAs and similar areas discussed under this rulemaking are established to restrict SURTASS LFA sonar SPLs to below 180 dB. As a result, the regulations require the Navy under its LTM program to determine the distance to the 180–dB isopleth during all LFA operations (see RTC MIC4). Since the Navy will not transmit SURTASS LFA sonar signals at an SPL greater than 180 dB inside OBIAs, additional SPL monitoring is not necessary.

Comment MIC7: The OBIAs are inadequate. The four OBIAs comprise only a portion of the offshore biological areas of particular importance to marine mammals. NMFS' system for identifying and designating additional OBIAs has ignored available information on marine mammal species collected by NMFS, Navy, and others. It is recommended that if such data were not examined in developing the proposed rule, then that should be carefully examined before proceeding with the final rule. Examples include: (1) NW Hawaiian Islands 50-nm (92.6-km) zone for monk seal foraging, (2) Pioneer Sea Mount, (3) Tanner Bank, (4) Santa Rosa-Cortez Ridge, (5) The (Sable) Gully off Nova Scotia, (6) feeding grounds of non-Bay of Fundy right whales, (7) 200-m (656.2-ft) isobath surrounding Silver and Navidad Banks, to Hispaniola, and enclosing the established migration corridor of the North Atlantic humpback whale population, (8) major upwelling sites, such as off Africa, India, Gulf of Oman, South America, and US and continental shelf and reef-estuary systems, (9) all IWC whale sanctuaries, (10) all U.S. NMS, (11) marine protected areas, (12) Natural World Heritage sites/ UNESCO Biosphere Reserves, (13) known migration routes, and (14) Monterey Bay NMS (60-nm (111.1-km) limit for sound emissions). The proposed system for designating OBIAs inappropriately places the burden on the public to show that offshore areas are important for marine mammal breeding, feeding or other biologically important functions.

Response: NMFS does not consider it necessary to expand the list of OBIAs prior to its making the required determinations under section 101(a)(5)(A) of the MMPA. While some

of the areas mentioned in the comment would qualify for nomination as an OBIA, a delay in the rulemaking process to implement additional OBIAs is not warranted, especially considering the high level of effectiveness of the tripartite monitoring system. Second, the notice of proposed rulemaking made clear that NMFS could not accept petitions for new OBIAs during this rulemaking since any nominations at that stage would not be available for public review before inclusion or rejection in this final rule. NMFS considers a public review and comment period a necessary step in establishing new OBIAs. Once this final rule is implemented, NMFS will accept petitions for OBIAs in accordance with 50 CFR 216.191 promulgated in this final rule. However, as stated in the preamble to the proposed rule, petitions will not affect authorizations for taking marine mammals within those areas until an OBIA is final (if that is the determination). It should be recognized that NMFS may also nominate areas as OBIAs, but does not believe that it should be the sole proponent for nominating areas and that was the reason for allowing it to be a public process following standard rulemaking practice. Additional discussion on OBIAs can be found elsewhere in this document.

NMFS recommends however, that areas already subject to significant anthropogenic noise such as seismic and shipping, areas within 12 nm (22 km) of any coastline, or otherwise already excluded (Arctic, Antarctic oceans), areas that cannot be geographically described (e.g., ''the unknown numbers of northern right whales in unknown areas of concentration''), and areas designated for non-biological reasons (e.g., the IWC's Indian Ocean Sanctuary) not be nominated. Areas being nominated must include sufficient information to indicate why that area warrants more protection than would be provided through the Navy's visual, passive acoustic and HF/M3 monitoring program and 180–dB shut-down procedures. If petitions are received without sufficient information for NMFS to justify the petition, NMFS will determine whether the nominated area warrants further study. If it does, NMFS will begin a scientific review of the petition.

Depending upon the degree of scientific information provided by the nominator, the number of other petitions also under consideration, and the number of scientifically related issues on marine mammals also under review in NMFS, this process may add an additional year or more to the petition process. For this reason, NMFS recommends not nominating areas that are not known areas of high concentration for marine mammals, especially for breeding, feeding or migrating, that warrant more protection than will be provided under the tripartite monitoring and shut-down protocols.

Comment MIC8: The (Sable) Gully has recently been designated by the Department of Fisheries and Ocean, Canada, as a pilot marine protected area. This should be recognized.

Response: While the Sable Gully is significant for marine mammals (see Hooker *et al.*, 1999), and may be a good candidate for nomination as an OBIA, NMFS is concerned that continuing oil exploration, including intense seismic surveys, and shipping within the Sable Gully and in nearby waters would limit the Gully's effectiveness for marine mammal protection. It should be recognized that a significant portion of the Gully is already protected as it is within a straight-line projection of the 200-m (656.2-ft) isobath of OBIA1. An application for considering the waters outside the 200-m (656.2-ft) isobath as an OBIA should provide information on why marine mammals would benefit by exclusion of one short-term source of anthropogenic noise (SURTASS LFA sonar), when other sources of anthropogenic noise (commercial shipping, seismic) are more prevalent on a daily and yearly basis. Moreover, NMFS is unaware that any protective measures have been provided for the Gully through regulations under Canada's Oceans Act.

Comment MIC9: Special consideration should be given to minimize potential impacts in the areas that have been identified as critically important seasonal feeding areas for the northern right whale within the Gulf of Maine. OBIA1 may not afford adequate protection for the right whales known to frequent areas along the 200-m (656.2-ft) isobath in the Gulf of Maine at certain times of the year. The OBIA should be extended to include the complete range of northern right whale. It must include the unknown summering ranges of females and unknown migration routes. OBIA1 offers little protection for deep-water species, such as the northern bottlenose whale.

Response: The NMFS and Navy agree that special consideration should be given to minimizing potential adverse impacts from the operation of the Navy's SURTASS LFA sonar in those areas that have been identified as critically important seasonal feeding areas for the right whale within the Gulf of Maine and surrounding shallow water areas. As stated in the Navy's Final EIS (Subchapter 2.3.2 (Alternative 1; The Preferred Alternative)), OBIA1 encompasses the entire water area inside the 200-meter isobath of the North American east coast. In discussions with the Maine Federal Consistency Coordinator, the Navy confirmed that the seaward limit of OBIA1 connects directly across the narrow entrance to the Gulf of Maine between Browns Bank to the north and Georges Bank to the south. Therefore, the Navy will not operate in the Gulf of Maine. It should be noted that the Navy will observe the geographic restrictions of OBIA1 during all seasons of the year, not just during seasonal feeding. Also OBIA1 was designed to include within its boundaries all North Atlantic right whale critical habitats. Therefore, the Navy will not operate in that part of the range of the northern right whale where populations are concentrated. As previously stated, SURTASS LFA sonar will observe geographic restrictions on operations within the Gully, a known deepwater area for northern bottlenose whales.

Finally, any whales in other deep-water areas, such as offshore migration routes which are normally not areas of high concentration (see RTC MIC11), will be protected through the tripartite monitoring mitigation and the SURTASS LFA shutdown criteria.

Comment MIC10: In sensitive areas like humpback breeding areas, as much as 25 percent of the population could reasonably be affected in a critical manner (which is beyond simply harassment). The commenter does not believe that this represents a legitimate attempt to minimize harm due to testing LFA sonar. The distance from marine mammal breeding areas should be at least 200 km (108 nm)(i.e., 140 dB), during the breeding period. NMFS should also identify other biologically important areas and determine the distances that LFA should be allowed to operate in order to keep received levels below 130–140 dB.

Response: NMFS does not agree with the commenter that marine mammals will be injured or killed incidental to operating SURTASS LFA sonar with the implementation of the mitigation and monitoring measures that are required by these regulations. Equating receipt of a ping (or multiple pings) to a prediction in a reduction in the gene pool of 25 percent of the males (those that stopped singing), as the commenter has implied in his letter, is not justified. In addition, NMFS believes the commenter has overestimated harassment takings by use of 10 $\log_{10}$

(N), instead of 5 $\log_{10}$ (N), as noted in RTC SIC76. The AIM used in the Navy's Final EIS indicates that approximately 2.5 percent (geographic mitigation only) to 1.9 percent (with geographic mitigation plus monitoring mitigation) of humpback whales off Kauai, HI could be harassed during a mission, not 25 percent as noted by the commenter. This includes multiple pings as noted in detail in the Final EIS.

The commenter advocates that sound levels not exceed 130–140 dB in biologically sensitive areas. In Miller *et al.* (2000), the commenter states ''As the song of these (humpback) whales is associated with reproduction, widespread alterations of their singing behavior might affect demographic parameters, or it could represent a strategy to compensate for interference from the sonar.'' The article stated that the behavioral response must be widespread. However, the independent scientists conducting Phase III of the LFS SRP did not conclude that the alterations of behavior observed in the LFS SRP Phase III were widespread (see RTC SIC 23 and 24). Therefore, NMFS believes that a SURTASS LFA sonar vessel, operating in accordance with the regulations and applicable LOA is not likely to have a significant (or widespread) impact to biologically important behaviors. This would include biologically important behaviors for the Hawaiian humpback whales, which will be additionally protected by the Navy's implementation of the 145–dB diver mitigation measure for Hawaii waters.

Moreover, recognizing the propagation paths for SURTASS LFA sonar described in the preamble of this document and the operational characteristics of SURTASS LFA sonar requiring operation at close to full power in order to be effective, this recommendation fails the ''practicable'' test mandated by the MMPA when NMFS prescribes the means of effecting the least practicable impact on marine mammals.

Areas of critical importance to marine mammals, such as breeding areas, may be nominated as an OBIA under these regulations. Additional information on nominating areas can be found elsewhere in this document. By regulation, OBIAs are limited to SPLs below 180 dB.

The reference to ''testing'' as the proposed action is not totally accurate. As stated in the Final EIS (page 1–1), the Navy's proposed action is the employment of SURTASS LFA sonar with ''employment'' meaning the use of LFA sonar during routine training and testing as well as the use of the system during military operations. Since the Navy must train in the same way it expects to fight in order to be effective, and because the Navy should not be excluded from large portions of the ocean, a recommendation to restrict the LFA sonar to levels of 130–140 dB cannot be accepted.

Comment MIC11: One organization believes that impacts could be minimized by offering seasonal protection through known migration paths. Many of these species for which migratory paths are available are listed by the IUCN (International Union for the Conservation of Nature) as endangered or threatened species and should be considered.

Response: NMFS believes that known migration paths for marine mammals that have a marine mammal density significantly greater than surrounding waters during a discrete period of time may qualify as an OBIA. NMFS recommends that such areas be the subject of a petition to designate an OBIA. However, to NMFS' knowledge most non-coastal migratory paths for marine mammals extend over broad swaths of the ocean with marine mammal density not much greater than other areas. Since operational restrictions in these broad areas could seriously impact the Navy's ability to carry out its mission if these areas were established as OBIAs (since it would essentially prohibit LFA sonar from operating in extensive areas in the oceans), and since marine mammals (and sea turtles) would be similarly protected from receiving an SPL greater than 180 dB through utilization of the HF/M3 sonar in the vicinity of the SURTASS LFA vessel, based on practicality the establishment of these extensive areas as OBIAs would be unlikely.

Comment MIC12: One organization stated, ''the unknowns are so pervasive that * * * the Office of National Marine Sanctuaries has asked the Navy to avoid deploying the LFA within the Monterey Bay National Marine Sanctuary.''

Response: In its consultation letter to the Navy dated May 15, 2001, the ONMS requested that the received levels in Monterey Bay NMS not exceed 180 dB throughout the Sanctuary and 145 dB around active marine mammal research projects.

Comment MIC13: Provide a geographic presentation to illustrate the physical reach of anthropogenic sounds from the system to the OBIAs.

Response: The SPL will be restricted to below 180 dB within the OBIAs. The physical reach of anthropogenic sound from the array to the boundary of the OBIA is shown in the Final EIS Figure 2–4. However, the vast majority of the time the vessel will be at a much greater distance away from the OBIA boundaries and the SPL at the boundary will be correspondingly much less than 180 dB.

General Mitigation Concerns

Comment M1C14: The proposed mitigation is fundamentally flawed because it only applies to the 1-km (0.54 nm) radius (180-dB zone), which does not include non-auditory effects (below 180 dB) as evidenced by the Greek and Bahamas strandings. The LFA mitigation zone should not exceed 120 dB. Because sound levels greater than 140 dB can be received at ranges of 200 km (108 nm), the 12-nm (22-km) geographic mitigation is ineffective.

Response: The selection of the 180-dB criterion and the issue on strandings have been discussed in detail in previous RTCs in this document and in the Final EIS Subchapter 1.4.2.1. An analysis by Cudahy and Ellison (2002), subsequent to the release of the Final EIS, on the potential for resonance from SURTASS LFA signals to cause injury supports the conclusion that injury will not occur at distances greater than the 180-dB sound field. While the MMPA requires that take levels be reduced to the lowest level ''practicable,'' there is no scientific basis to require the Navy to mitigate to an SPL of 120 dB, and not practical to limit the source to such low levels that would prevent a marine mammal from receiving an SPL of 120 dB. Because the Navy's analysis indicated that marine mammals may be harassed incidental to SURTASS LFA sonar operations, and that this harassment could not be mitigated to a zero level, the Navy applied for an incidental take authorization.

Comment MIC15: Commenters provided NMFS with a list of suggested mitigation measures that they believed should be incorporated into the rulemaking. These recommendations are addressed here; however, suggested mitigation measures that are actually monitoring or reporting requirements will be addressed in the appropriate sections of this document.

Comment MIC15a: The Navy should reduce the maximum allowable RL below 180 dB.

Response: As indicated previously, limiting SURTASS LFA sonar to received SPLs below 180 dB is not practical considering the requirement of SURTASS LFA sonar operations to detect targets at significant distances in order to protect fleet assets and the crew members on those assets. Since (1) marine mammals will be protected from injury by the tripartite monitoring

system, (2) as indicated in this document, marine mammals will not be injured at levels below 180 dB, and (3) the Navy has applied for an authorization to harass marine mammals incidental to conducting SURTASS LFA sonar operations, this mitigation measure is not practical and, therefore, is not adopted.

Comment MIC15b: LFA sonar should operate only in marine ''desert'' areas.

Response: While adoption of this mitigation measure presumably would result in lower marine mammal incidental harassment takes than operating in more nutrient-rich waters, this mitigation measure is not practical since the Navy needs to operate in areas with different water characteristics, as stated in the Navy's NEPA documents. This would not be available to the Navy if it were limited to biologically unproductive areas.

Comment MIC15c: The Navy should reduce the source level, duty cycle, and annual transmission hours of LFA sonar.

Response: Source levels, duty cycles, and transmission hours are all based on the need to carry out the Navy's mission successfully. Therefore, imposing these suggested mitigation measures is not considered practical.

Comment MIC15d: NMFS should consider an extension of the safety zone and pre-operation surveys of the local area of operation.

Response: In order to ensure, to the greatest extent practicable, that marine mammals do not receive an SPL equal to, or greater than 180 dB, NMFS has amended the mitigation measures to incorporate an interim operational restriction to include a SURTASS LFA sonar system shutdown within a buffer zone that will extend 1 km (0.54 nm) from the outer limit of the 180-dB safety zone (SURTASS LFA mitigation zone). This may extend up to 2 km (1.1 nm) from the vessel, depending on oceanographic conditions. At this distance, SPLs will be significantly less intense than at 180 dB. Once a marine mammal is detected by the HF/M3 sonar, ramp-up of the HF/M3 sonar will cease or, if transmitting, the SURTASS LFA sonar system signal transmissions will be suspended.

Pre-operation surveys are not practical since the SURTASS LFA sonar vessel normally operates independent from the fleet and too distant from shore to make aerial surveys practical. Observations from the SURTASS LFA vessel prior to operation is a requirement of the monitoring program. If marine mammal abundance is high in the operation area, NMFS expects the Navy to not operate in the area to limit the number of transmission delays due to marine mammal incursions into the safety/buffer zones and will move to another area with lower mammal abundance.

Comment MIC15e: The funding of independent research on resonance effects and other impacts that the Navy and NMFS have not considered previously should be undertaken before operations begin.

Response: Resonance effects have been discussed in RTCs MMIC33 through MMIC38 and, as noted, do not appear to be a concern at SPLs below 180 dB (Cudahy and Ellison, 2002). NMFS has identified a need for the Navy to research the impacts of resonance on marine mammals. This research is already underway by ONR. However, until such research has been concluded, NMFS has implemented two interim operational restrictions to preclude the potential for injury to marine mammals by resonance effects; these include the previously mentioned establishment of the buffer zone shutdown requirement outside the safety zone and limiting the operating frequency of SURTASS LFA to 330 Hz and below, instead of 100 to 500 Hz as proposed. NMFS has determined that a frequency of 330 Hz, which is the upper-bound of the lowest practicable operating frequency for SURTASS LFA sonar, is the highest frequency that SURTASS LFA sonar will be authorized to operate to take marine mammals by harassment. This latter restriction is supported by the testimony of Dr. Darlene Ketten, an expert on the functional morphology of marine mammal hearing, before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on October 11, 2001, that the consensus of data is that virtually all marine mammal species are potentially impacted by sound sources with a frequency of 300 Hz or higher. Both measures will ensure, to the greatest extent practicable, that marine mammals are not injured by the SURTASS LFA sonar signal. These protective measures will be retained until scientific documentation can be provided by the Navy which indicates they can be safely modified. This is explained elsewhere in this document.

Comment MIC15f: The Navy should replace LFA sonar in whole or in part to the extent practicable with new, advanced passive sonar technologies, which would reduce marine mammal takings incidental to deployment of LFA, or conduct a transparent and thorough alternatives analysis of such technologies before and each year the system is deployed.

Response: Please refer to RTC AC11. According to the Navy, research on improving passive sonar capabilities is intrinsic to the Navy since passive sonar would lower the detection ability by the enemy. Therefore, while the Navy would prefer alternative, passive technologies to be available for deployment, both because of the lower impact to marine mammals and its greater stealth ability to detect submarines, currently there are no feasible passive alternative systems available to accomplish the Navy's needs. This is explained in significant detail in Chapter 1 of the Navy's Final EIS. While the suggestion for an annual review of the availability of passive systems for submarine detection is a good one, NMFS doubts that technology would advance quickly enough that annual review would be required. However, NMFS has added a reporting requirement to the regulations requiring an unclassified review of passive technologies in the Navy's final comprehensive report.

Comment MIC16: NMFS should extend the geographic restrictions to completely cover the range of the endangered northern right whale.

Response: NMFS has established an OBIA for the entire known range for the East Coast population of the North Atlantic right whale. This includes areas in addition to those areas designated as critical habitat for this stock, such as the five areas of high use that were identified in the final recovery plan for right whales (NMFS, 1991; Perry *et al.,* 1999). Insufficient information currently exists on high use areas for the other stocks of North Atlantic right whales to designate these areas for additional mitigation. Once scientists have information on the location and distribution of North Atlantic right whales outside this area, NMFS would consider creating OBIAs to include any high use areas. However, OBIAs will not be based on speculation on the location of animals, as that would require extending OBIAs to vast portions of the North Atlantic and/or North Pacific oceans, which are likely to contain relatively few marine mammals.

Comment MIC17: In order to warn marine mammals of impending LFA sonar operations, the Navy should broadcast a distinctive, unnatural, relatively broadband, LF signal (e.g., a time-reversed Orca call) at levels loud enough to be received by whales at 5 to 10 km from the vessel.

Response: There is no scientific research available suggesting that time-reversed orca calls would be successful

in deterring marine mammals from the area of the SURTASS LFA sonar. Tests using standard orca signals have produced mixed results with calls being ignored at times and causing a flight reaction at other times. However, broadcasting a ''distinctive, unnatural, relatively broadband LF signal'' that would effectively deter marine mammals presumes that all marine mammal species can hear the LF signal and that there would be a cognitive recognition that the signal means that another loud, and possibly annoying, LF sound might be forthcoming. This is unlikely unless the marine mammal can associate a cause and effect between the two noise sources based on earlier experience. Therefore, until such time as research gives some indication that this mitigation measure would be effective, NMFS will not require the Navy to intentionally harass marine mammals by broadcasting loud LF signals in order to deter marine mammals from an area where they might be exposed to the distinctive, narrowband LF signal of SURTASS LFA sonar.

Monitoring Concerns (MOC)

Comment MOC1: Additional screening within the 1-km (0.54-nm) zone should be required to record cetacean sightings for a period of hours before and after operations to determine resident cetacean population levels.

Response: Requiring the tripartite monitoring system to start up several hours prior to, and continue for several hours after the conclusion of, LFA sonar transmissions is neither warranted nor practical. First, the Navy will be operating for the most part in waters that are not areas known for high concentrations of marine mammals; therefore, few, if any, marine mammals would be within the SURTASS LFA mitigation zone. In addition, increasing the time for transmission of the HF/M3 sonar would not be consistent with the goal of reducing noise in the ocean. NMFS believes that this additional noise is simply not warranted. Also, at this time, use of the SURTASS LFA sonar vessel as a full-time platform of opportunity to assess marine mammal populations is not practical since the marine mammal observers aboard the SURTASS LFA sonar vessels will not have the expertise needed for producing scientifically acceptable line transect population assessments and the SURTASS LFA vessel scheduling will preclude conducting the type of line transect surveys required for adequate population assessments. However, this remains an issue that NMFS would like to revisit in the future.

Comment MOC2: Monitoring will continue for a period of no less than 15 minutes after the last SURTASS LFA sonar transmission. Will NMFS make it a condition that if there is observable change in marine mammal behavior that monitoring will continue until such behavior returns to normal?

Response: The length of time that the visual observations will continue will be dependent upon visibility, and the speed and direction of both the whale(s) and the SURTASS LFA sonar vessel. Visual observations are required to be continued from a period 30 minutes prior to first transmission of the SURTASS LFA sonar, continue between transmission pings, and continue for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise. This is a condition contained in the final rule. However, provided conditions remain favorable, observations should continue as long as beneficial observations can be made. Therefore, a modification has been made to these regulations clarifying this point.

Comment MOC3: Thirty minutes is inadequate for pre-transmission observations because sperm whales dive for periods in excess of 45 minutes and northern bottlenose whales dive often for 35 to 40 minutes. Thus, it appears that the species at most risk are those likely to go undetected by the monitoring program.

Response: Visual observations are mainly intended to alert operators of the HF/M3 sonar that marine mammals are in the vicinity of the SURTASS LFA sonar vessel. However, if a marine mammal is sighted within the safety zone, the observer would immediately notify the appropriate person that the SURTASS LFA sonar should not be powered up or transmissions should be suspended immediately. This is practical because, in clear weather, skilled observers can see distances greater than the HF/M3 sonar is capable of reaching. Also, while whales may dive for up to 45 minutes, it is unlikely that the ship's bridge watch would miss a large whale surfacing from its previous dive if it is within a mile or two of the vessel. The monitoring mitigation does not rely solely on visual observations. The HF/M3 sonar was developed specifically to detect the presence of marine mammals underwater both day and night under all weather conditions. Since it is the HF/M3 sonar that is the principal means for detecting marine mammals within the safety and buffer zones of the SURTASS LFA sonar vessel, it is unnecessary to extend the observer period to 45 minutes.

Comment MOC4: Since 20–30 percent of the animals that may be in the safety zone prior to and/or during operations are apparently unlikely to be detected, prevention of serious injuries or mortalities may not be possible. The purported effectiveness of the tripartite approach assumed the HF/M3 sonar (70 percent effective), visual (5 percent effective), and passive acoustic (5 percent effective) monitoring would result in a combined mitigation effectiveness of 80 percent. This methodology is flawed because the detection efficiencies are only additive if they are completely non-redundant.

Response: This comment is based on the modeling of potential impacts in the Draft EIS, which utilized a conservative assumption of 70 percent for the effectiveness of the active acoustic monitoring. The Navy changed the methodology of calculating overall monitoring mitigation effectiveness for the Final EIS (see the Final EIS Subchapter 4.2.7.1 for the calculations) based on comments received on the Draft EIS. As this comment is based on reading the Draft EIS, not the Final EIS, it is no longer applicable. This was not an additive calculation.

NMFS believes that the 66-percent effectiveness of the tripartite monitoring system described in the Final EIS significantly underestimates the capability of the monitoring program. For the purposes of the Final EIS analysis, a percentage of 55 percent was utilized based on the probability of detection of a single, small dolphin with a single ping from the HF/M3 sonar. This was a very conservative assumption. Since an animal is likely to receive several pings between the limits of HF/M3 detection (2 km (1.1 nm)) and the 180–dB safety zone, detectability rises above 95 percent prior to an animal entering the 180–dB SURTASS LFA mitigation zone. (see Navy's Final EIS, 2.3.2.2 for details).

In conclusion, due to the high level of marine mammal detectability, the potential for marine mammals to be injured is considered negligible and, moreover, marine mammal mortality is neither expected nor authorized.

Comment MOC5: The methods that the Navy will use to monitor for marine mammals within 1 km (0.54 nm) distance are limited in their efficacy. Visual monitoring is limited to daylight and good weather. The proposed rule document and Draft EIS state that tripartite monitoring mitigation is only 80 percent effective. As stated in the Final EIS, during tests of the HF/M3 sonar only 11 of 20 small cetaceans traversing the sonar were detected.

Therefore, 45 percent of them may be exposed to injurious levels.

Response: For the purpose of estimating impacts on marine mammals for the Navy application and the NEPA documents, the modeling of potential impacts utilized a conservative assumption of 50 percent for the effectiveness of the active acoustic monitoring and an overall effectiveness of 66 percent with passive acoustic and visual monitoring included. However, recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2, has provided empirical support for the conservative assumption found in this document, demonstrating a probability of single-ping detection within the SURTASS LFA sonar mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5).

As part of the determination of the HF/M3 sonar's probability of detection, a dedicated experiment was conducted to verify the system's ability to detect bottlenose dolphins. The tests were conducted in shallow (300 m (984 ft)), acoustically downward-refracting waters that produced a high-clutter environment significantly higher than expected under more normal conditions (*i.e.,* deeper water, predominantly CZ propagation, lower clutter). Trained dolphins were commanded to dive to moored objects 130 m (426.5 ft) below the surface with the HF/M3 system positioned 400 to 1000 m (1312 to 3281 ft) away. The predicted detection rate for these exercises was estimated at approximately 80 percent (per dolphin dive cycle). Detailed analysis of 20 dolphin dives resulted in 11 dolphin detections. The small experimental sample size used here suggests that the differences in predicted and measured performance are reasonable. It should be emphasized that these tests were conducted under environmental conditions that reduce probabilities of detection significantly in comparison to deep-water scenarios. In addition, search zones will typically be at larger depths than those focused on during these tests, also serving to increase probabilities of detection via advantageous thresholding adjustments to lower clutter fields. It should also be noted that these tests were conducted on single dolphins. In the wild, small pelagic odontocetes are normally found in pods ranging upward in size from 7 to 1,000 individuals. Therefore, the probability of at least one of the animals in the pod being detected in at least one ''ping'' is very high. Once a marine mammal is detected by the HF/M3, the SURTASS LFA sonar shutdown protocols will be implemented. Therefore, it is unlikely that any marine mammals will be injured by SURTASS LFA sonar operations.

Visual Monitoring

Comment MOC6: The Navy relies heavily on visual monitoring which is inadequate.

Response: Subchapter 4.2.7.1 of the Final EIS states that visual monitoring is limited to daylight hours and its effectiveness declines during high sea states. Because of the limitations of both passive acoustic and visual monitoring, the Navy developed the HF/M3 sonar to provide 24-hour, all-weather active acoustic monitoring of an area of approximately 2-km (1.1 nm) radius from the array. In calculating the effectiveness for the various monitoring systems for purposes of the Final EIS, the visual monitoring component of the three-part monitoring system was estimated at 0.09, or 9 percent. At an effectiveness of this level, the Navy cannot be considered to be relying heavily on visual monitoring.

Comment MOC7: When visibility is poor (night/bad weather), how will monitoring 30 minutes prior to LFA transmissions be accomplished? What will happen when visibility doesn't allow visual monitoring to start 30 minutes prior to LFA sonar transmissions?

Response: The 24-hour, all-weather HF/M3 sonar was developed and will be used specifically to address the low effectiveness of visual monitoring. The HF/M3 monitoring program will be above 95 percent effective in detecting most marine mammals prior to entering the 180–dB mitigation zone.

Comment MOC8: Provide details of visual monitoring, such as, qualifications of observer, training, testing/evaluation by NMFS, and effectiveness.

Response: Personnel trained in detecting and identifying marine animals will make observations from the SURTASS LFA sonar vessel. At least one observer, qualified by NMFS, will train, test and evaluate other visual observers. Visual observation effectiveness estimates will be provided to NMFS in accordance with LOA reporting requirements.

Passive Acoustic Monitoring

Comment MOC9: No validation is provided for passive acoustic monitoring in determination of beaked whales in the mitigation zone.

Response: The rationale for determining the effectiveness of passive sonar for detecting beaked whales was addressed in the Final EIS Subchapter 4.2.7.1 and in RTC SIC70 in this document.

Active Acoustic Monitoring

Comment MOC10: Will the report on the testing of the effectiveness of the HF/M3 sonar be made public through the **Federal Register**?

Response: The subject report (Ellison and Stein, 2001) is available to the public (*http://www.surtass-lfa-eis.com/Download/ index.htm*). In addition, a paper on this subject was presented at the 2001 Acoustical Society of America meeting (Stein *et al.,* 2001).

Comment MOC11: How can the monitoring system detect deep-diving whales (such as sperm and beaked whales) that approach from below the vessel? One organization also stated, ''We also believe that it is a weak argument to state that the closer an animal is to the vessel, the more likely they will be detected. Cetaceans spend the majority of their lives under the water's surface.''

Response: Because cetaceans spend much of their time underwater, the HF/M3 sonar was developed, and will be used, to provide continuous, underwater monitoring of the SURTASS LFA mitigation zone. The scenario for a deep-diving whale to go undetected as it approached the vessel from below was taken into consideration in the analysis of the HF/M3 sonar performance (Ellison and Stein, 2001). The probability of detection of a large baleen whale with a single ping within the SURTASS LFA mitigation zone is above 95 percent, except for a small volume directly under the array. This is defined as a down-ward looking conical volume starting at the array to a depth of 140 m (459 ft) with a radius of 300 m (984 ft). Animals, even those diving, will approach the SURTASS LFA sonar vessel laterally because of their movement and the movement of the SURTASS LFA vessel. The HF/M3 sonar scan rate is every 45 to 60 seconds. Animals closing on the SURTASS LFA vessel at 2.5 m/s (5 knots) will remain in the 1-km to 2-km (0.54- to 1.1-nm) annulus surrounding the HF/M3 sonar for approximately 400 seconds, and will, therefore, theoretically be detectable to the sonar no less than 8 times. For an animal to go undetected, it would have to remain in the small volume below the array (defined above) matching course and speed with the vessel. Even though marine mammals can stay submerged for long periods, it is highly unlikely that they would remain in the small volume beneath the SURTASS LFA array for the 400-second (over 6 minutes) period necessary to avoid

being detected. Therefore, animals approaching the mitigation zone from below have an extremely high likelihood of being detected before entering the SURTASS LFA mitigation zone.

Comment MOC12: NMFS should develop performance standards for the detection of marine mammals within the 180–dB safety zone and require the Navy to test and demonstrate the capability of the HF/M3 sonar or some other suitable detection system before finalization of the rule making process. Have any relevant studies of the effects of fish-finder type sonar on marine mammals been conducted?

Response: The Navy has demonstrated the capability of the HF/M3 sonar (Ellison and Stein, 2001; Stein *et al.,* 2001). These documents are available upon request. Recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2 pages 2–17 to 2–22, has validated the Navy's overly conservative assumption, demonstrating a probability of detection within the SURTASS LFA sonar mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5). This is significantly higher than the 55 percent used in the Final EIS.

Testing on marine mammals has been conducted. Schlundt *et al.* (2000) tested two species of marine mammals for TTS from exposure to 1-second pure tones for 0.4, 3, 10, 20, and 75 kHz. The HF/M3 sonar frequency range is 30 to 40 kHz. In the 20 to 75 kHz band, that study and follow-up testing showed no masked TTS at levels of 193 dB at 75 kHz.

Comment MOC13: The Navy provides no estimate of the detectability of sea turtles and, therefore, LFA operations could encounter a significant portion of the population.

Response: The Final EIS (RTC 4–2.4) provides a discussion on why SURTASS LFA sonar operations would not encounter a significant portion of any sea turtle population and the Final EIS (Subchapter 4.1.2) indicates, for example, that less than 3 leatherback sea turtles per year per ocean would be affected by SURTASS LFA sonar. However, the calculations in the Final EIS did not consider the diving depth of the leatherback (an average diving depth of 50 to 84 m (164 to 275.6 ft) and a duration of 9 to 15 minutes), nor the water depth of the 180–dB zone (87 to 157 m (285 to 515 ft)). This means that even though they are considered to be continuous divers and can dive to over 200 m (656 ft), their normal dive patterns would only put them in the 180–dB SURTASS LFA mitigation zone for a fraction of the time that was used in the Final EIS calculations. Also it is unlikely that hatchlings would dive to a depth of over 80 m (262 ft) (i.e., the normal depth to the top of the 180–dB sound field), so they are unlikely to get into the 180–dB SURTASS LFA sonar mitigation zone and thereby be harmed.

While no mitigation effort can totally eliminate the possibility of impact on an individual sea turtle, the mitigation procedures, including the new HF/M3 sonar, would be capable of detecting sea turtles before animals were subject to loud LF sounds, thereby reducing the potential impact of SURTASS LFA sonar operations on even these small numbers of sea turtles. Finally, although HF/M3 testing has not been conducted on sea turtles, and an effectiveness percentage has not been provided in the Final EIS, leatherback sea turtles (*i.e.,* the most probable turtle species to be encountered by SURTASS LFA sonar) are about the size of a dolphin (1–2 m in length). Therefore, based on multiple sweeps, the HF/M3 sonar should have a detection effectiveness for leatherback sea turtles similar to that for a small cetacean.

Comment MOC14: NMFS states efficiency of the HF/M3 sonar is not certain. The HF/M3 sonar is untested. Therefore, it plans to calculate take based only on geographic restrictions. How can NMFS be certain that negligible impacts on marine mammals are at the lowest practicable levels?

Response: The Navy has demonstrated the capability of the HF/M3 sonar (Ellison and Stein, 2001; Stein *et al.,* 2001). These reports are available upon request from NMFS. Recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2, and these reports, has validated the effectiveness of the HF/M3 sonar, demonstrating a single-ping probability of detection within the 180–dB SURTASS LFA mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5). This is substantially greater than the pre-test assumption that the HF/M3 sonar would be 50 percent effective (tripartite monitoring was believed to be 66 percent effective). Since the research on the HF/M3 has been conducted, as suggested in the proposed rule, and as this research has documented the HF/M3 effectiveness at over 95 percent, NMFS has determined that harassment take levels can be assessed taking into account both the geographic mitigation and the monitoring mitigation measures. These take levels can be found in Table 4–10 of the Navy application and Table 4.2–10 of the Final EIS (final column in both tables), but may overestimate the level of impacts since the HF/M3 has been empirically tested and shown to be up to 50 percent more effective than previously estimated. As noted elsewhere in this document, implementation of these mitigation measures, in addition to other mitigation, ensures that the takings by SURTASS LFA sonar will be at the lowest level practicable, without imposing additional measures that might compromise the effectiveness of the Navy's ability to use SURTASS LFA sonar to carry out its mission.

Comment MOC15: The commenter states that ''the HF/M3 sonar could use frequencies above 200 kHz to impact odontocetes less.''

Response: Because absorption losses are much higher for 200 kHz than at 30 kHz (about 10 times greater), 200-kHz sonar cannot effectively provide the required range of at least 1 km (0.54 nm). Also, except for auditory impacts, there is no evidence to support 200 kHz as causing less impact to odontocetes than 30–40 kHz.

Comment MOC16: Did the Navy have a take authorization for the testing of the HF/M3 sonar on dolphins?

Response: Testing with artificial targets from October 1998 through May 2000 does not require a permit under the MMPA. The August 2000 tests were conducted with bottlenose dolphins under the Navy's authorized Marine Mammal Program (San Diego, CA), and, therefore, did not require any permits.

Comment MOC17: One commenter states that the HF/M3 sonar cannot be compared to a fish-finder because fish-finder sonar is typically focused in a narrow beam below the vessel where it is less likely to disturb marine mammals. One organization believes that it is nonsensical to rely on a monitoring system that is itself harmful to marine mammals as well as unproven in its effectiveness.

Response: Fish-finder sonars are generally forward-looking active sonars for spotting fish schools. Fish-finder transducers have horizontal beamwidths from 10 to 46 degrees at ranges on the order of 1 km (0.54 nm). The HF/M3 sonar utilizes four ITC 1032 transducers with 8-degree horizontal and 10-degree vertical beamwidths, which sweep a full 360 degrees in the horizontal every 45 to 60 seconds with a maximum range of approximately 2 km (1.1 nm). The beamwidth for the HF/M3 sonar is comparable to commercial fish finders.

The HF/M3 sonar effectiveness has been discussed previously in this document. There is no scientific evidence that sonars, similar to the HF/M3, which are in common use in the fishing and maritime industries, harm marine life. In addition, a requirement

to ramp-up the HF/M3 ensures that marine mammals and sea turtles are detected by the HF/M3 sonar at the lowest sound level possible. Once a marine mammal or sea turtle is detected, further increases in power are not initiated until the animal is no longer detected. At that time, ramp-up would continue unless that animal, or another, was detected.

Comment MOC18: The Navy did not employ the best available mitigation (monitoring) technology because it did not consider the use of Synthetic Aperture/Side Scan Sonar and Range Gated Viewers (laser camera) in lieu of the HF/M3 sonar.

Response: According to the Navy, the two technologies listed are not the best available technology for active acoustic monitoring. Synthetic aperture arrays/side scan sonar does not meet the omni-directional requirement for detection of marine animals. As discussed in Table 1–1 of the Final EIS, the use of laser technology in underwater applications is severely limited in range. For example, the AquaLynx underwater-gated viewing laser-camera system has a range measured in tens of meters, not the 2 km (1.1 nm) range of the HF/M3 sonar.

Ramp-up

Comment MOC19: In response to Comment 30 in the proposed rule regarding ramp-up of the SURTASS LFA sonar, NMFS stated, ''Since the HFM3 sonar will be operating for a minimum of 30 minutes prior to initiation of SURTASS LFA sonar, ramp-up of the SURTASS LFA sonar is not necessary.'' The commenter fails to see how ramp-up of the HF/M3 sonar, which differs in virtually all its characteristics from SURTASS LFA sonar, can serve as a substitute for ramp up of the SURTASS LFA sonar. This commenter is concerned that if NMFS considers that the differing characteristics of the mid-frequency sonars used in the Bahamas make their impact irrelevant to an analysis of the potential impacts of SURTASS LFA sonar, then it is inconsistent to consider the sound characteristics of the HF/M3 sonar to be effective as mitigation for SURTASS LFA sonar. Ramp-up of the HF/M3 sonar might warn away (or attract) HF specialists, but it might have no effect on LF specialists, either to warn or to attract. Another commenter, expressing similar concerns, also believes that the Navy will use the HF/M3 to detect marine mammals and also to repel them with it.

Response: For this action, ramp-up of the HF/M3 is designed to protect marine mammals from the potential to incur an injury, not from the potential to incur non-injurious harassment. The concept behind ramp-up of the HF/M3 is to ensure (presuming ramp-up is actually effective), that marine mammals can move out of the HF/M3's 180–dB safety zone (considerably smaller than the SURTASS LFA sonar's 180–dB zone), if it finds the noise annoying, but before it becomes harmful. However, more importantly, ramp-up allows acousticians monitoring the HF/M3 to locate marine mammals first within the HF/M3's 180–dB zone at the lowest SPLs possible and certainly before high SPLs from the HF/M3 sonar are achieved and secondly, once its own safety zone is secured, to ensure that the SURTASS LFA sonar's 180–dB safety zone is free of marine mammals and sea turtles. This use of ramp-up differs from most uses of ramp-up, which rely solely on visual observations and shut-down only if surface observations detect marine mammal presence. The HF/M3 will not be used to repel marine mammals, since once a marine mammal is detected, ramp-up may not proceed until, under minimal SPLs, marine mammals are no longer detected within the 180–dB safety zone. Once the SURTASS LFA sonar's 180–dB zone is determined to be clear of marine mammals, the SURTASS LFA sonar can be turned on without the need for ramp-up. In this case, once the SURTASS LFA sonar's 180–dB zone has been determined to be free of marine mammals, the frequency of the hearing of the marine mammal is not relevant.

In addition to the reason mentioned in this response (marine mammals would receive no greater protection from injury from ramping up than will be provided under the HF/M3 ramp-up), a requirement for ramping-up of the SURTASS LFA sonar is not practical for several reasons. Of importance to NMFS is that ramping up, at a rate similar to that which is used in seismic (about 6 dB/minute), would likely result in several additional minutes of unnecessary LF sounds in the marine environment, creating more noise to ensure, theoretically at least, that marine mammals have more time to leave an area where they might be annoyed by the sounds. This is simply not warranted. Second, operational times in an area would probably increase to account for ramp-up times between ''pings'' (6 to 15 minutes).

Comment MOC20: One commenter believes that the difference in power output of the HF/M3 sonar and the LFA sonar means that it is not sufficient to use the HF/M3 device as a ''ramp-up'' in order to warn cetaceans of the impending loud noise. LFA produces such a powerful output that it should be ramped up.

Response: As stated in the Final EIS Subchapters 2.1.1 and 2.3.2.2, the source level of a SURTASS LFA projector is 215 dB while the source level for the HF/M3 sonar is 220 dB. The rationale for the ramp-up of the HF/M3 sonar is discussed in the previous RTCs.

Comment MOC21: Research is needed on the ramp-up theory to determine if it is useful or harmful to the health of marine mammals. One organization suggests that the Navy conduct research on the ''ramp-up'' theory, in order that it can be better understood whether or not such an activity is useful or harmful to the health of marine mammals. There is no evidence that ramp-up will allow fish and whales to escape.

Response: NMFS understands that scientific research on ramp-up effectiveness is planned or actually underway, supported through funding by the Minerals Management Service (MMS).

Long-Term Monitoring (LTM)

Comment MOC22: Visual and acoustic monitoring is neither designed to, nor will it, mitigate the effects of any taking of marine mammals that occurs. The purpose of monitoring should be to confirm that animals are taken only in the ways and numbers authorized and that there are no non-negligible population level effects.

Response: The purpose of the visual and acoustic monitoring is to monitor the location of marine mammals with respect to the SURTASS LFA mitigation and buffer zones to ensure appropriate shutdown to avoid injury to marine mammals by the SURTASS LFA transmissions. While visual and passive acoustics are unlikely to significantly mitigate injurious takings by themselves, based on their ability to cue the operator of the HF/M3 sonar to the presence of marine mammals, the tripartite monitoring program and shutdown protocols are expected to be close to 100 percent effective in avoiding injurious takes. This has been explained previously in this document. However, NMFS concurs that monitoring should be used to collect the necessary data to determine incidental takes. Swartz and Hofman (1991), for example, recognized that some forms of take may occur beyond the field of view of an observer at a particular site and that the monitoring program must be designed accordingly. This monitoring will be conducted by the Navy through long-term research. Moreover, the visual, passive and acoustic monitoring will extend beyond the 180–dB safety

zone, and observers will record interactions and behavioral reactions by marine mammals within the maximum distance possible. For more information see Final EIS Subchapter 5.2.

The assessment of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during SURTASS LFA sonar operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Post-operation acoustic modeling will provide estimates of any taking beyond the SURTASS LFA mitigation zone.

Comment MOC23: The LTM Program must have a secure budget and a detailed plan for research submitted to NMFS and made available to the public. $1.2M is not enough funding for the LTM Program.

Response: The LTM program had been budgeted by the Navy at a level of $1M per year for 5 years, starting with the issuance of the first LOA. For additional information see the Final EIS (RTC 2–4.12).

Vice Admiral Dennis McGinn, Deputy Chief of Naval Operations for Warfare Requirements and Programs testified before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on 11 October 2001,

> The Navy funds the majority of all marine mammal research in the world. The Navy provided approximately $7M in FY01 for research directly related to assessing and mitigating the effects of noise from Navy activities on the marine environment. The funding plan for FY02 calls for an increase of approximately $2M to $7M, contingent on final budget approval and recent events.

Comment MOC24: The LOA should contain a condition that the ONR continue at current levels its research activities into the effects of noise on marine mammals. The LTM Program cannot be accepted as a substitute for performing the research to fill data gaps.

Response: The Holder of the LOA for the SURTASS LFA sonar systems will be the CNO, or his duly appointed representative, not ONR. Under the MMPA, NMFS does not have jurisdiction to require a Federal component to commit to certain funding levels, especially one that is determined through the Congressional budget process. Applicants for a small take authorization are required through statements made by Congress when it implemented the small take program under the MMPA to conduct the appropriate research to address impacts and ways to mitigate those impacts. Provided the applicants undertake that research, they are considered to be in compliance with the MMPA. However, as noted previously, Navy funding for marine mammal research is expected to increase, not decrease, in the future. NMFS recommends those interested in marine mammal research being funded by ONR view its web site: *http://www.onr.navy.mil/sci_tech/personnel/cnb_sci/ mammal_bio.htm*

Comment MOC25: The LTM Program is inadequate to fill data gaps.

Response: It is not the purpose of the LTM Program to fill all of the data gaps, but to address those of the most immediate concern. NMFS is recommending that the Navy conduct the following research relative to LFA sonar over the first 5-year authorization period:

1. Systematically observe SURTASS LFA sonar exercises for injured or disabled marine animals. Past correlations between military operations and the stranding of beaked whale, including the Bahamas event, call for closer observation of all sonar operations.

2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).

3. Conduct research on the behavioral reactions of whales to sound levels that were not tested during the research phase, specifically between 155 dB and 180 dB. This should be done in a research format rather than in actual training operations.

4. Conduct research on the responses of sperm and beaked whales to LF-sonar signals. These species are believed to be less sensitive to LF-sonar sounds than the species studied during the LFS–SRP. However, enough questions exist that these species should be studied during the five-year permit period.

5. Conduct research on the habitat preferences of beaked whales, and plan future SURTASS LFA sonar exercises to avoid such areas. Avoidance is the most effective mitigation measure.

6. Conduct passive acoustic monitoring using bottom mounted hydrophones before, during, and after SURTASS LFA sonar operations for the possible silencing of calls of large whales.

7. Continue research with the HF/M3 mitigation sonar. This is the primary means of mitigation, and its efficacy under a range of conditions must continue to be demonstrated. Receiver-Operator-Characteristic curves should be constructed if possible.

8. To determine potential long term, cumulative effects from SURTASS LFA sonar, select a stock of marine mammals that is expected to be regularly exposed to SURTASS LFA sonar and monitor it for population changes throughout the 5-year period. Alternatively, look for long-term trends in the vocalizations of marine mammals that are exposed to SURTASS LFA signals (see number 6).

Comment MOC26: A suitable monitoring and research plan/program should be required (provided, made public, and considered in rulemaking) before initial authorization is issued, and reauthorization should be based on a demonstration of suitable progress under the plan. NMFS should determine, and specify in the final regulation, the operational and other information that will be required to enable the best possible retrospective analyses if changes in demography of any potentially affected marine mammal populations are detected. Minimally, the Navy should maintain records and report dates, times, and locations of each exercise, including the number, duration of and times between transmissions, and all observations of marine mammals made incidentally as well as the product of the required monitoring.

Response: The Navy provided its monitoring plan in its application under section 101(a)(5)(A) of the MMPA and in the Final EIS (Subchapter 2.4). That plan was subject to public review and comment during the ANPR (64 FR 57026, October 22, 1999), and proposed rulemaking (66 FR 15375, March 19, 2001) stages. Public comments on monitoring and research plans were addressed in the proposed rule and in this document.

As noted in §§ 216.189(a)(3) and (a)(4) of this document, NMFS will continue to make determinations on the adequacy of the mitigation, monitoring, and reporting prior to each annual renewal of an LOA. NMFS normally maintains the monitoring and reporting requirements in the LOA, not in the regulations, in order to allow flexibility in responding to monitoring and reporting concerns and/or opportunities. This flexibility would not be available under comment-and-response rulemaking because it could take up to a year to implement any modifications to the monitoring plan. NMFS notes however, that an LOA is as legally binding on a holder as the regulations. It should be noted also that this policy is not unique to the SURTASS LFA sonar, but is followed wherever NMFS believes it needs this flexibility. Elsewhere in this document, NMFS provides a detailed description of the required reporting under this authorization request.

Comment MOC27: Because impacts between approximately 150 and 180 dB are arguably uncertain, monitoring marine mammal exposure to SPLs between 150 and 180 dB is not only

legally required but scientifically imperative. There is no requirement for this monitoring in the proposed rule.

Response: Because it is not feasible to monitor marine mammal behavioral reactions to SURTASS LFA sonar signals from the LFA sonar vessel at the distances that would be expected for SPLs of 150–180 dB, NMFS did not consider this a practical requirement for monitoring under the proposed rule. However, in accordance with the findings of Swartz and Hofman (1991), the scientific value of obtaining this information is important for NMFS to ensure that its determination that the takings would have no more than a negligible impact on affected marine mammal stocks was correct. Therefore, NMFS has made this a key component of the recommended research under the LTM program (see number 3 in RTC MOC25) for the Navy to undertake over the next 5 years. NMFS encourages the Navy to conduct this research at its earliest opportunity.

Comment MOC28: How will the Navy provide actual harassment and non-serious injury estimates, verify estimates predicted from modeling, and verify its assumptions that no serious injury or deaths will occur between 120 and 180 dB? Because there is no pre-, during, or post-transmission monitoring on marine mammals experiencing RLs less than 180 dB, the Navy cannot assume that there will be no serious injury or deaths below 180 dB.

Response: Please see RTC MOC22 regarding the possibility of injury below 180 dB. Visual, passive and active acoustic monitoring will provide information on take levels to a range of up to 3 nm (5.6 km) depending upon conditions. This will provide NMFS and the Navy with information on take levels to SPLs as low as approximately 173 dB. Information on takes by harassment at distances greater than 3 nm (5.6 km) are not practical and, therefore, the Navy will conduct research to assess impacts, including injury. For example, in order to verify the Final EIS assumptions concerning potential impacts below 180 dB SPL, NMFS recommends that the Navy conduct research on the reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB as part of its research under the LTM program. This follows the findings of Swartz and Hofman (1991) that determined that it is acceptable to substitute research on impacts to marine mammals in lieu of site-specific monitoring when site-specific monitoring is not feasible or practicable. However, until the results from this research are available, information discussed in detail in this document provides NMFS with sufficient information to determine that no injury to marine mammals is likely to occur at distances beyond the range of the tripartite monitoring.

Cudahy and Ellison (2001) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB and Richardson *et al.* (1995) speculated that for 10 elongated sonar pulses, the auditory damage risk criteria for marine mammals (based on human studies) might be 183 to 213 dB.

Second, in order to avoid tissue damage at 180 dB, NMFS has incorporated a marine mammal buffer zone 1 km (0.54 nm) beyond the SURTASS LFA mitigation zone (180-dB sound field). This interim operational restriction requires the SURTASS LFA sonar to suspend transmissions immediately whenever a marine mammal is detected by the HF/M3 sonar. Depending upon the size of the animal, this may be as far as 2 km (1.1 nm) from the SURTASS LFA source. This should not be interpreted to mean that marine mammals are considered to be injured at that distance, only that this measure became practical for reducing potential impacts on marine mammals once the HF/M3 tests were conducted indicating its operational efficacy at these greater distances. In addition, NMFS is imposing an interim operational restriction on the frequency of the SURTASS LFA sonar sound to 330 Hz and below. This is based on statements made by Ketten (2001) before Congress on October 11, 2001 (see RTC MIC15e). Both measures will ensure, to the greatest extent practicable, that marine mammals are not injured by the SURTASS LFA sonar signal. These protective measures will be retained until scientific documentation can be provided which indicates they can be modified while still providing sufficient protection for marine mammals.

Comment MOC29: Is the LTM Program only to assess what occurs within the 180-dB zone, noting when an animal enters and the system is shut down? How will behavioral effects be monitored?

Response: The LTM Program is made up of two parts. First is the necessary input data for NMFS-directed reports under the LOA, which has been elaborated upon in the Final EIS (Subchapter 2.4) and elsewhere in these RTCs. The second part involves long-term independent scientific research efforts on topics recommended by NMFS. The assessment of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during SURTASS LFA operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Data analysis from the LTM and post-operation acoustic modeling will provide estimates of any taking beyond the SURTASS LFA mitigation zone.

Comment MOC30: Commenters suggested that the following elements should be included in the monitoring and reporting program:

Comment MOC30a: Augment the proposed passive acoustic monitoring program to determine whether there are differences in the nature or frequency of marine mammal vocalizations following SURTASS LFS sonar transmissions that may be indicative of behavioral disruptions beyond the proposed 180-dB safety zone.

Response: It is not practical from a technical (SURTASS is tuned to detect the signal characteristics of submarines, not marine mammals), logistical, or financial standpoint to conduct this work from the SURTASS LFA sonar vessel. However, it has been shown that this can be accomplished using the Navy's SOSUS seafloor hydrophone arrays. Thus, the Navy will consider this recommendation as part of their research program. There is good potential for partnering with NOAA's Pacific Marine Environmental Laboratory to address the basis of this comment in the northeastern Pacific during future SURTASS LFA operations.

Comment MOC30b: Routinely examine observational data collected during SURTASS LFA sonar exercises to help identify additional marine mammal concentration areas that should be designated as OBIAs.

Response: NMFS will review the reports to determine whether areas in which SURTASS LFA sonar exercises have numerous shutdowns due to marine mammal incursions into the monitoring zone would qualify as a future OBIA candidate. The public will be able to review the annual report for the same reason.

Comment MOC30c: Design and conduct a series of direct experiments to document how representative species and age-sex classes of marine mammals respond to different types and levels of LF sounds.

Response: While this recommendation is beyond the scope for required ship-board monitoring of the SURTASS LFA sonar because it must be conducted independently by scientists operating under a scientific research permit issued under section 104 of the MMPA, NMFS is recommending the Navy conduct research during this

authorization period on those species most likely to be impacted from SURTASS LFA sonar, such as sperm and beaked whales.

Comment MOC30d: Undertake an analysis to determine the changes in the size, range, and productivity of potentially affected species and stocks that could be detected by the survey programs currently being conducted by NMFS, the Navy, MMS and others, and then take such steps as necessary to coordinate and augment the programs to provide the capability for detecting biologically significant changes in representative species and stocks.

Response: At this time, this analysis cannot be conducted because NMFS is not aware of how to assess a cause-and-effect relationship for a short-term noise effect when population level effects to marine mammals from ship noise and collisions, fishery takes and increasing contaminant levels cannot be accurately determined. NMFS believes that as we gain new information from appropriate research we can determine cumulative impacts from all anthropogenic causes, not just one type of sound that is unlikely to be repeated again in the near term. For example, the impacts from anthropogenic noise from the several thousand vessels entering and leaving Los Angeles Harbor, Boston Harbor, or Honolulu Harbor annually should be incorporated into a cumulative impact assessment to determine if SURTASS LFA sonar sound is presumed to be cumulatively affecting marine mammals in those areas.

Comment MOC30e: Maintain a running record of events (detections) occurring before, concurrent, and after LFA sonar deployment.

Response: SURTASS LFA sonar monitoring will begin 30 minutes prior to start-up, continue between transmission pings, and continue for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise. During this time period all detections and behavioral observations by the tripartite monitoring program will be recorded.

Comment MOC30f: Passive and active (HF and LF) acoustics should be recorded for later analysis; passive recordings can be analyzed outside the 180-dB contour for vocalizing animals at distances on the order of 50 km (27 nm).

Response: The passive and active sonar systems will monitor for marine mammals and make recordings. These classified recordings will be available for analysis by scientists with proper security clearances. These data must be requested by these scientists prior to an exercise. However, this will not supersede LOA reporting requirements.

Comment MOC30g: The HF/M3 sonar recordings can be used to analyze animal movements relative to the LFA array.

Response: To the extent possible, considering the mitigation measure to ensure that the HF/M3 sonar SPL is at the lowest level practicable at the tracked animal, this recommendation will be implemented.

Comment MOC30h: The long-term monitoring plan should include monitoring and assessment of both annual assessments of the previous year's data, as well as long-term, retrospective analysis of cumulative SURTASS LFA sonar effects (such as population productivity, distribution, and stranding incident rates).

Response: NMFS agrees that an analysis of the results of previous monitoring is needed whenever a SURTASS LFA sonar exercise takes place within an oceanic area that has been exposed to SURTASS LFA sonar signals within the period of these regulations. These analyses would include a review of stranding data for areas wherein SURTASS LFA sonar was operating at the time.

However, since NMFS, using the best scientific information available, has determined that population level effects are unlikely since no marine mammals are expected to be injured or killed, and no marine mammals are likely to be subject to long-term exposures from SURTASS LFA sonar signals, changes in population productivity or distribution are unlikely to occur due to SURTASS LFA sonar operations. NMFS noted previously the scientific problem with assessing a population level cause-and-effect analysis for SURTASS LFA sonar without also accounting for lethal takings due to ship collisions, fishing mortality, and increasing anthropogenic contaminant levels and intentional harvesting. Therefore, NMFS will continue to monitor population level effects through its marine mammal status reviews required by section 117 of the MMPA. This formal review process would, if warranted, analyze the potential impacts from SURTASS LFA sonar and other sources of anthropogenic noise.

Comment MOC30i: Possible cumulative effects beyond the requested 5-year authorization should be considered in the development of the monitoring and reporting requirements and included as a condition of any authorization issued. Assessment of short- and long-term effects should be made.

Response: NMFS agrees that the cumulative impacts of anthropogenic noise on marine mammals should be assessed, but questions whether the SURTASS LFA sonar LTM program (which is monitoring conducted from the SURTASS LFA vessel) would be capable of providing the necessary information to make those determinations. In one year, each of the two SURTASS LFA sonar ships, with each ship located in a different area, would make approximately six active operations totaling 108 days of active sonar operations or approximately 18 days/mission/year. Second, marine mammal breeding is seasonal, thereby further limiting the period when marine mammals could potentially be exposed during this critical period.

To address cumulative impact, NMFS has recommended that the Navy select a marine mammal stock that is expected to be regularly exposed to SURTASS LFA sounds and monitor it for population changes throughout the 5-year period of these regulations, looking for long-term trends in vocalization patterns. NMFS would also like to work with interested scientists to design a research proposal (research monitoring that is not conducted during standard operations) that could address this concern in a manner that would be scientifically acceptable, humane to the affected marine mammals, and to determine the funding priority for this research in competition with the research proposed by NMFS (described previously).

The LTM program, including research under the LTM, which has a budget of $1M for each of the 5 years, will be described in the LOA. Because of variable factors (such as locations of operations, times of year), priorities of research areas, coordination with other research projects, and funding, it is premature to determine exact research elements at this time.

Comment MOC31: The LFA sonar should be used to monitor the position of baleen whales. This can be compared to the detections by the HF/M3 sonar.

Response: According to the Navy, the SURTASS LFA sonar is designed and acoustically tuned to detect and track submarines, not marine mammals. As the target strength of marine mammals is much less than that of a submarine, the ability to detect a whale is greatly diminished. In addition, the longer pulse lengths of SURTASS LFA signals mean there would be longer times when the receiver is blind due to the signal being transmitted. Also, as explained in the Final EIS, LF signals attenuate greatly in the near-surface zone, where many of the marine mammals usually

reside. Larger animals can be detected by the HF/M3 sonar at up to 2 km (1.1 nm), with probabilities of detection for most marine mammals above 95 percent (Ellison and Stein, 2001) and can be tracked within the 1 km (0.54 nm) buffer zone and 180-dB SURTASS LFA mitigation zone, where SURTASS LFA transmissions would be required to be suspended if a marine mammal was detected. Therefore, the use of the SURTASS LFA array both to track baleen whales and as a comparative test for the accuracy of the HF/M3 sonar is not technically feasible. It is also not necessary because the HF/M3 system has already been successfully tested.

Comment MOC32: The Navy should use independent or NMFS observers with appropriate security clearance on board SURTASS LFA sonar vessels.

Response: Security clearance requirements for personnel onboard SURTASS LFA sonar vessels make this recommendation impractical. Considering the normally rapid turnover of marine mammal observers (as observed in the marine mammal/fishery observer program), the high cost to conduct security clearances, and the several months required for Department of Defense security clearances, NMFS believes that this recommendation is not practical as it is unlikely to be capable of operating efficiently. The alternative that has been accepted by NMFS for this action is for the Navy to hire one or more qualified marine mammal biologists, highly experienced in marine mammal observation techniques, to train appropriate Naval personnel, or Naval civilian personnel, for conducting these observations. The requirements for training and limitations on length of marine mammal watches will be contained in the LOAs and will be similar to LOA requirements for other activities. However, this does not preclude NMFS employees trained in marine mammal observations and holding proper security clearances from participating in cruises to assess the performance of the observer monitoring program.

Reporting Concerns (RPTC)

Comment RPTC1: Data on marine mammals seen in and outside the proposed 180-dB safety zone and any overt responses to the sonar transmissions may provide valuable information validating or invalidating the assumptions upon which the proposed negligible effects determination is based. There is no apparent reason why such raw data should be classified or should not be provided to NMFS within a few days or weeks after conclusion of each LFA sonar training exercise conducted during the one-year periods of incidental taking authorizations.

Response: NMFS agrees that more timely reporting requirements are needed to ensure that the incidental takings of marine mammals by SURTASS LFA sonar are within reasonable limits established by these regulations. As a result, NMFS has amended the regulations to require the Navy to submit information to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. This is the standard period of time provided for all small take authorizations. However, this period of time is insufficient to allow the Navy to declassify information that might compromise national security; as a result the quarterly reports will be classified and the information will not be publically available until the annual report. The Navy estimates that there will be approximately 6 such exercises per vessel in a normal year. Therefore, NMFS will receive four quarterly (classified) reports annually from each of the two vessels. In the interim, NMFS will use these quarterly reports to monitor the SURTASS LFA sonar activity to ensure compliance with the terms and conditions of the LOA and regulations.

A draft, unclassified, annual report will contain an analysis of impacts from the individual missions, which will not be possible under the time limitation governing quarterly reports. However, because an annual comprehensive analysis report must be submitted 90 days prior to expiration of an LOA, the number of missions being reported under the first year of these regulations will be limited to those that can be be analyzed within that time period.

Comment RPTC2: Two commenters inquire whether the monitoring reports required by the LOA will be available to the public through publication in the **Federal Register**.

Response: Within 30 days of receipt by NMFS, all annual reports under this action will be available to the public. Notice of availability will be published in the **Federal Register**. However, due to high costs for publication, NMFS does not plan to publish the annual reports themselves in the **Federal Register**.

Comment RPTC3: Section 216.186 should be amended to require that the Navy provide the report required under the LOA to potentially affected states. Sharing this information may assist the states and others in the ongoing monitoring and assessment of impacts from the deployment of the proposed SURTASS LFA sonar.

Response: See RPTC1 for response. NMFS does not believe that requiring the Navy to submit these reports to interested states is warranted since the Navy has met the Coastal Zone Management Act (CZMA) consistency requirements with respect to all coastal states (with the exception of California) that could be potentially affected by LFA (22 states) and territories. However, states can make arrangements with the Navy or NMFS for annual reports for activities taking place in federal waters or an interested state's waters.

Marine Mammal Stranding Reports

Comment RPTC4: The Navy states that it will coordinate with principal marine mammal stranding networks to correlate analysis of any whale strandings with SURTASS LFA sonar operations and with reports to NMFS. What would this coordination entail? Is this reporting in connection with the LTM Program that would be annual?

Response: As mentioned previously, the LTM reporting requirement will be quarterly, as well as annually. NMFS believes that this more timely reporting is needed to ensure that the incidental takings of marine mammals by SURTASS LFA sonar are within the limits established by these regulations. In regard to coordinating the stranding network, the NMFS National Stranding Coordinator and the small take exemption program work closely with each other whenever a stranding occurs. Marine mammal strandings are required to be reported to the National Stranding Coordinator. NMFS makes every effort to determine the cause of strandings. If the cause of a stranding may be acoustical, part of this effort will be to determine the location of the SURTASS LFA sonar vessel in relation to the stranding event. If there is a potential relationship, NMFS will coordinate with the Navy to investigate the event. Because necropsies from stranding specimens take significant time to complete (if fresh tissues are obtained), any results from the investigation will be taken into consideration at the earliest opportunity. Summary reports on strandings are usually made available upon completion either through the NMFS' web site or in the MMPA Annual Report. If a stranding is acoustically related (such as the Bahamas beaked whale stranding), the results of the investigation are likely to be published as a NOAA Technical Memorandum.

However, if a direct causal relationship between the stranding event and SURTASS LFA sonar is

determined, the LOA may be suspended, modified or revoked in compliance with the requirements of the MMPA, these regulations, and the terms and conditions of the LOA.

Comment RPTC5: Reliance on stranding networks to detect impacts on pelagic animals will not work. It is likely that in the offshore environment LFA operations could cause multiple whale deaths, but this would not likely be observed as coastal strandings. The Navy cannot monitor marine mammals that receive serious injury, die, and sink.

Response: As indicated throughout this document, serious injury or mortality is unlikely to occur given the high capability of the tripartite monitoring system to detect marine mammals prior to an animal incurring an injury. While NMFS does not expect stranding data to be an important resource for determining impacts to marine mammals from SURTASS LFA sonar, it is one source of information that NMFS will use in its analysis of impacts from SURTASS LFA sonar.

Comment RPTC6: Following LFA exercises, real-time information should be provided for a period of some days to appropriate stranding coordinators, and the Navy should be responsible for coastline surveys for stranded and distressed marine mammals, especially in areas where networks are not well developed.

Response: Considering the offshore nature of SURTASS LFA sonar and the evidence that it is highly unlikely that marine mammals will be injured by SURTASS LFA sonar, real-time data is neither warranted, nor practical. For these same reasons, NMFS believes that requiring the Navy to conduct shoreline surveys is not warranted. If a marine mammal stranding occurs that appears to be acoustically related, NMFS will coordinate information from the Navy, principally time and location of each SURTASS LFA sonar vessel, with stranding data from NMFS' stranding coordinators to determine whether a link might exist between the two events.

Comment RPTC7: Protocols should be prepared for the eventuality that any marine mammal becomes injured.

Response: The marine mammal reporting requirements will require the Navy to report all marine mammals located inside the 180-dB safety zone as an ''injury,'' recognizing that not all of these marine mammals will be injured. However, if a marine mammal shows acute behavioral reactions indicative of an injury, the LOA will require the Navy to follow its protocol for ship strikes and report the incident to NMFS as soon as possible. NMFS will review each incident to determine the necessary action. Additional protocols to assist injured marine mammals are neither warranted (because of the unlikely occurrence of an injury) nor practical (considering the distance from shore, the single-vessel nature of SURTASS LFA operations, the lack of veterinary experience in a typical crew, and high freeboard of the typical SURTASS LFA sonar vessel precluding easy access to a marine mammal).

Comment RPTC8: Establish an extramural, independent board of scientists, regulators, representatives of environmental non-governmental organization (NGOs) and citizen representatives to review monitoring data and relevant research and to make recommendations to NMFS as well as to the Navy for reducing the system's impacts.

Response: As explained in more detail in RTC37 in the proposed rule, NMFS does not believe that a formal board is necessary for reviewing monitoring and research reports. Interested individuals could meet as NGOs and independently or jointly comment to NMFS, based on annual reports, or petition NMFS under the Administrative Procedure Act (APA) to amend regulations based on their interpretation of the reports.

Miscellaneous (Mitigation, Monitoring and Reporting) Concerns (MC)

Comment MC1: What is the Navy's mitigation procedure when operating off beaches where humans swim?

Response: Humans in the water are not at risk from SURTASS LFA sonar transmissions. The Navy sponsored research to study the potential effects of LF sound on humans in the water. Based on this research, in conjunction with guidelines developed from psychological aversion testing, the Navy concluded that LF sound levels at or below 145 dB would not have an adverse effect on recreational or commercial divers. See the Final EIS Subchapters 1.4.1 and 4.3.2.1 for additional details. As discussed in the Final EIS Subchapter 5.1.2, SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB. Other than for very short periods of time, swimming and snorkeling occur in areas that extend from the surface to depths not greater than 2 m (6.5 ft). Applying acoustic theory and detailed measurements to these depths, there would be substantial sound transmission losses occurring in the top layer of water (about 1.8 m [6 ft]) where swimmers would most likely be found. Sound fields in this layer of water would be about 20 dB less than the sound fields in adjacent deeper water. Because of this acoustic attenuation and the restriction that SURTASS LFA sound fields will not exceed 145 dB in known diving areas, participants in activities that may involve submersion below the ocean's surface, such as swimming, surfing, and snorkeling, would not be significantly impacted by exposure to LF sounds transmitted from the SURTASS LFA sonar. This topic was discussed in the Final EIS Subchapter 4.3.2.1 and Chapter 5.

MMPA Concerns

Scope

Comment MMPAC1: One organization states that the Navy has failed to meet the legal standard of the MMPA, as determined in *Kokechik Fishermen's Association* v. *Secretary of Commerce,* 839 F.2d 795 (D.C. Circ. 1988). They note that the Court stated that the Secretary has no authority to disregard incidental takings of certain species or stocks without first determining whether or not the population of each species was the optimum sustainable population (OSP) level, even if the impact is negligible, before issuing a permit that authorizes the take of another species or stock. According to this commenter this meant that NMFS could not issue general permits in the absence of definitive findings that the take of all marine mammals expected to occur in a particular fishery would pass the ''will not disadvantage the species'' and ''consistency with MMPA policies'' tests of section 103 of the MMPA. The proposed issuance of an LOA for the SURTASS LFA system is a similar situation. Here NMFS is proposing to allow the incidental take of some species of known status and information at the same time as it would authorize the take of other species for which, due to a lack of information, it can not truly make a negligible impact finding. They oppose this action because they believe that it is contrary to both the court's findings and the MMPA requirements.

Response: The decision in *Kokechik Fishermen's Association* v. *Secretary of Commerce,* 839 F.2d 795 (D.C. Circ. 1988), does not apply to this case because it is factually and legally distinguishable. The incidental take permit challenged in Kokechik was for commercial fishing operations, governed by section 101(a)(2) of the MMPA, whereas the incidental authorization that is the subject of this final rule is for an activity other than commercial fishing. As such, it is

governed by section 101(a)(5). Unlike incidental take permits for commercial fishing, incidental take permits for activities other than commercial fishing are expressly exempt from the requirements of section 103. (See § 101(a)(5)(C)(ii).) The determinations required under section 101(a)(5)(A) of the MMPA are discussed in this document.

Comment MMPAC2: One organization notes that section 101(a)(3)(A) of the MMPA requires the Secretary to make his decision ''with due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals.'' They state that the Navy's application specifies that ''no two individuals will react to SURTASS LFA sonar exposure in the same way'' indicating that regardless of any scientific research conducted it may detrimentally affect one mammal, but not another and thus will have at best unpredictable effects on cetacean populations.

Response: The comment refers to the requirements of section 101(a)(3)(A) governing waiver of the moratorium in section 101(a). Small take authorizations under section 101(a)(5) of the MMPA are not a ''waiver''; therefore, section 101(a)(3)(A) is not applicable to this action. Section 101(a)(5)(A) sets forth the particular criteria and procedures that apply to the authorization of incidental takes of marine mammals pursuant to an otherwise lawful activity other than commercial fishing. See also *Animal Protection Institute of America* v. *Mosbacher,* 799 F. Supp. 173 (D.D.C. 1992), in which the court determined that the Secretary of Commerce, in issuing a permit under section 101(a)(1), was not required to follow the more elaborate administrative proceedings required for issuance of a waiver under section 101(a)(3)(A) of the MMPA.

Second, the quoted statement from the Navy's application was taken out of context. The full text is:

> It is important to recall that risk varies with both level and duration. In terms of biological risk, it is important to note that individuals will vary in their pre-exposure hearing sensitivity, in their actual PTS responses, and in the severity of the consequent biological effects (survivorship and reproduction). No two individuals will react to SURTASS LFA sonar exposure in the same way. The risk continuum estimates that 95 percent of the marine mammals exposed to a single ping at 180 dB could suffer a risk of non-injurious harassment. Based on the above discussion, this is a conservative estimate.

Furthermore, the application did not imply that SURTASS LFA sonar exposure will have, at best, unpredictable effects on cetacean populations. What the application stated was that the risk continuum was developed to account for the variability of reactions among individuals and that the values utilized to determine significant modification to biologically important behavior were conservative.

Finally, NMFS is charged by section 101(a)(5) of the MMPA to make the appropriate determinations based on whether impacts are negligible at the species and stock level, not at the level of the individual animal. This, NMFS has done.

Comment MMPAC3: One organization notes that section 101(a)(3)(A) of the MMPA requires NMFS' decision ''in accord with sound principles of resource protection and conservation as provided in the purpose and policies of this Act.'' In that regard, the Navy application specifies that ''[t]he percentage of animals that pass unseen is difficult to determine * * *'' This is not in accord with sound principles of resource protection.

Response: See RTC MMPAC 2. However, the quoted statement from the Navy application was taken out of context. The subject of discussion there was the limitation of a visual marine mammal monitoring system that applies to all maritime activities, from marine mammal population assessment surveys to implementing effective shutdown criteria for anthropogenic noise sources. It noted however, that because of the slow speed of the SURTASS LFA sonar vessel, the effective marine mammal survey strip width should be greater than possible for standard biological surveys allowing a greater percentage of animals to be seen than that of typical marine mammal assessment surveys. In that regard, the Navy has proposed, and NMFS has adopted, the tripartite monitoring system that will ensure, to the greatest extent practicable, that marine mammals will be detected prior to incurring an injury. No other maritime activity currently employs this level of mitigation.

Comment MMPAC4: This organization notes that under section 103(b)(1–4) of the MMPA, the Secretary is required to consider the effects harassment will have on the population levels, domestic and international treaty agreements, marine ecosystem health and the conservation of fishery resources. Also, under section 103(c)(2) of the MMPA, permit restrictions apply to the size, sex or age of the animal, and, section 104(b)(2)(A) requires that the issued permit specify the number and kind of animal. It is not possible to determine the size, sex, or age of the cetacean being harassed; thus making it impossible to determine the effect of LFA sonar on cetacean populations.

Response: See RTC MMPAC 2. Authorizations, such as the subject of this final rule, for small takes of marine mammals incidental to otherwise lawful activities (other than commercial fishing) under section 101(a)(5)(A) are not subject to the requirements of section 103 or 104 of the MMPA. See § 101(a)(5)(C)(ii) of the MMPA.

Even so, this action has been determined to be in compliance with all domestic laws and international treaties for which the United States is a signatory. For further information, please refer to Chapter 6 and RTC 6–1.5 of the Navy's Final EIS. Since takings by SURTASS LFA sonar will not result in the death or serious injury of marine mammals, age, sex, and size parameters are not necessary for assessing impacts on populations; all segments of the population are assumed to be affected equally. These regulations, however, specify the number (by percentage) and kind (by species) of marine mammals that might potentially be affected.

Comment MMPAC5: Commenters believe that, under the MMPA, NMFS must give more weight to the interests of marine mammals than the interests of the Navy. One commenter states that the precautionary principle and the conservative bias incorporated into the MMPA, which require the Federal government to give leeway to wildlife when the effects of a proposed action are unknown. The possible effects of LFA are unknown.

Response: In their joint final rule to implement the 1986 amendments to the MMPA and ESA to allow for small takes of depleted species of marine mammals (which includes endangered and threatened species) under section 101(a)(5) of the MMPA (54 FR 40338, September 29, 1989), NMFS and the USFWS addressed how they would make negligible impact determinations under section 101(a)(5) where the potential impacts of an activity are conjectural, speculative, uncertain, or unlikely. Relying on statements in the Congressional Record, the two agencies explained that they would apply a balancing test that weighs the likelihood of occurrence against the severity of the potential impact. NMFS continues to believe that this approach properly implements Congressional intent and has followed this guidance in making its determinations under section 101(a)(5) of the MMPA in this document. The precautionary principle is addressed in RTC MMPAC8.

Comment MMPAC6: LFA sonar is global in scope and impact. Therefore, it is illegal for NMFS to use the ''small

take'' exemption for a system of this size, potential damage, and geographic (global) scope and no rational interpretation of the MMPA supports the availability of a small take permit. The system ''self-admittedly'' will cover 80 percent of the world's oceans when fully deployed.

Response: The Navy has not stated that the SURTASS LFA system will cover 80 percent of the world's oceans when fully deployed. The total area that would be available for SURTASS LFA sonar to operate includes about 70–75 percent of the world's oceans. However, this in no way equates to affecting 70–75 percent of the world's ocean area. The current authorization is for only two SURTASS LFA sonar vessels—normally one in the Atlantic Ocean/Mediterranean Sea and the other in the Pacific/Indian Ocean. Therefore, SURTASS LFA sonar sound will not simultaneously affect this entire portion of the world's ocean.

The SPL that is capable of potentially causing injury to an animal is within approximately 1 km (0.54 nm) of the ship. For the purposes of analyses using the AIM and the risk continuum, there is a 50 percent risk of significant change in a biologically important behavior for a marine mammal exposed to 165 dB received level. The range from the SURTASS LFA sonar vessel for this received level, which could cause behavioral disruption but not injury, could extend to 25 to 65 km (13.5 to 35.1 nm). The received level at the surface along any straight path away from the ship would not decline logarithmically over distance, as would be expected if the sound spread by spherical spreading alone. The reason is that, for CZ propagation, the sound moves in an undulating path with turning points near the surface and near the bottom. Turning points near the surface, termed caustics, occur approximately every 30 nm. The received level at the surface would be high at the caustics but low in between them because most of the sound energy there would be found at great depth. While the SURTASS LFA sonar ships can operate in much of the world's oceans and their sound can be detected at several hundred miles using sophisticated listening gear, their potential to cause injury or affect behavior is limited to relatively close to the ship. Thus, the impact of SURTASS LFA sonar is not global in scope.

Comment MMPAC7: One organization notes that NMFS has never issued a small take exemption, let alone proposed rules, for an activity that is so global in its impact, and so uncertain in its impact. Others criticized the drafting of one set of regulations for a global program as not being in compliance with the MMPA.

Response: Provided the activity meets the requirements and criteria established by the MMPA, NMFS does not consider the fact that the Navy needs to be able to deploy the system for training, testing and routine military operations anywhere within the world's oceans (except for Arctic and Antarctic waters) should be the sole reason for denial of a small take authorization. Denial of an authorization is not warranted simply because an activity may be global in its area of operations, so long as the activity is confined to a specified geographic region at any one time. A contrary interpretation of the MMPA would require NMFS to deny future authorizations to other ''global'' activities, such as oil and gas seismic operations, commercial shipping, other military activities, oceanographic research, and future commercial supersonic transportation. All these activities have the potential to cause at least some form of behavioral harassment in marine mammals, and, similar to SURTASS LFA sonar (if there were more than one SURTASS LFA sonar ship at sea at the same time), have the potential to affect several geographic areas at the same time.

Implementing up to 54 sets of regulations, one for each of the designated biogeographic regions (called ''provinces'' in this document), would be unduly costly, unnecessarily cumbersome and potentially lead to fragmentation. Instead, NMFS has made the regulations generic for operation of SURTASS LFA sonar, and the LOAs, which are effective under the generic regulations, specific, to the extent necessary, for the specified province covered. This approach will accommodate the Navy's requirement to operate SURTASS LFA sonar on a global basis during the 5-year period of authorization (but within a specified geographic region during any single exercise) while meeting the MMPA's requirements and allowing NMFS to conduct a broad-scale analysis of the overall program.

Harm/Injury/Harassment Concerns

Comment MMPAC8: One organization states that since NMFS is moving to adopt the ''precautionary principle,'' the burden of proof is on the Navy to prove that LFA sonar is not harmful.

Response: NMFS has adopted the precautionary approach for the management of living marine resources, not the precautionary principle (NMFS, 1999). NMFS believes that the precautionary approach is at the core of the MMPA because the MMPA prohibits the taking of marine mammals unless exempted or permitted. Moreover, because the MMPA also authorizes the taking of marine mammals under section 101(a)(5), provided certain conditions and requirements are met, NMFS applies the precautionary approach through a careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level practicable. As described in this document, NMFS believes that it has applied the precautionary approach to the greatest extent possible for this action through a requirement for a fully effective monitoring and mitigation program that will protect marine mammals to the greatest extent practicable. These mitigation and monitoring programs are discussed elsewhere in this document. In addition, the Navy met its obligation to perform reasonable research into the potential for SURTASS LFA sonar to affect marine animals through the LFS SRP and the diver studies. As required by section 101(a)(5) of the MMPA, the Navy has provided documentation that SURTASS LFA sonar will not have more than a negligible impact on affected marine mammal species and stocks. NMFS believes that the information provided by the Navy is the best scientific information currently available. Where certain information is not complete, NMFS has added additional safeguards to protect marine mammals and required additional research on marine mammals for the Navy to conduct; this is consistent with the precautionary approach. New research will include research on behavioral reactions between 155 and 180 dB, response of sperm and beaked whales to LFA signals; and passive acoustic monitoring on whale-call silencing. For additional information see the Final EIS Subchapter 1.4 and RTC MOC25 in this document.

Finally, it should be recognized that the Navy does not have the burden to prove that LFA is not harmful. Its burden is to establish that the activity meets the requirements of section 101(a)(5)(A) of the MMPA, that is, negligible impact is the standard, not ''no harm.'' It is NMFS position that the Navy has met this burden, and that is why NMFS issued these regulations for the small take authorization.

Comment MMPAC9: One commenter states that removing TTS from Level A harassment means that it is also removed from consideration of ''harm.''

Response: Under the MMPA, taking means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or

kill any marine mammal. ''Harm'' is in the definition of take under the ESA, but not in the ''take'' definition under the MMPA. ''Harm'' has been used by the Navy in its SURTASS LFA sonar NEPA documents, and elsewhere, in part because of its responsibilities under section 7 of the ESA. TTS is a taking under the definition of harassment, defined under the MMPA as Level B harassment, as explained elsewhere in this document. However, the Navy throughout its documents, has conservatively considered TTS to be ''harm,'' thereby making the commenter's statement inaccurate.

Comment MMPAC10: One organization notes that NMFS states that its scientists and other scientists are in general agreement that TTS is not an injury (i.e., Level A harassment) and that only PTS is considered injury. This assertion directly conflicts with the National Research Council's (NRC) recommendation that ''The definition of Level A acoustic harassment should be related to the likelihood that a sound will produce temporary threshold shift (TTS), as well as to the magnitude of the TTS'' (NRC, 2000). Because scientists have noted that a range of only 15 to 20 dB exists between the onset of TTS and the onset of PTS (66 FR 15386), NMFS should both modify the definition of Level A acoustic harassment to include TTS and reduce the intensity of the sound field to something less than 180 dB.

Response: The NRC (2000) also stated in the same paragraph as the above quote, ''Animals that experience only low levels of TTS are not going to be injured, suggesting TTS as a conservative standard for prevention of injury.'' This action conforms with this statement by establishing a safety zone at an SPL lower than where TTS would be anticipated to occur.

Without commenters providing scientific data to support the argument that TTS is an injury, NMFS' determination, which is supported by research, provided in response to similar concerns for taking marine mammals incidental to the USS WINSTON S. CHURCHILL (66 FR 22450, May 4, 2001), and the North Pacific Acoustic Laboratory (NPAL) (66 FR 43442, August 17, 2001) remain valid for this action as it is the best science available. Reviewers interested in NMFS' response to this concern should review those documents, in particular RTC MMIC4 and MMPAC5 in the cited NPAL document. In the latter document, NMFS stated that it is precautionary to define the onset of PTS for marine mammals to be 20 dB of TTS. This should not be interpreted to mean that the onset of PTS results when you add 20 dB to the dB level found to cause the onset of TTS in an animal, but instead means that the onset of PTS is the sound exposure level (SEL), in dB, that would cause 20 dB of TTS.

Comment MMPAC11: Will NMFS confirm that this rule would establish Level A harassment at the theoretical onset of PTS, which for lack of more data might be construed to be 10–15 dB above 192 dB in bottlenose dolphins and belugas, thus Level A would not be considered before RL of 207 dB?

Response: At 192 dB, Schlundt *et al.* (2000) found about 6 dB of TTS, the lowest measurable level for TTS. However, the 15–20 dB (not 10–15 dB) difference, mentioned in the proposed rulemaking document, refers to the difference between the SELs that cause the slightest TTS and the onset of PTS. As explained in more detail in RTC PRC6 in the NPAL final rule (66 FR 43442, August 17, 2001) and in RTC 29 in the final rulemaking document for the USS WINSTON S. CHURCHILL (66 FR 22450, May 4, 2001), experiments on chinchillas have shown that this species experiences full recovery from up to 40 dB of TTS (Ahroon *et al.,* 1996) from impulsive noise. However, in the absence of comparable data for marine mammals, NMFS believes it is precautionary to define the onset of PTS for marine mammals to be 20 dB of TTS. This 20 dB level would be considered conservative for chinchillas, and would likely be conservative for marine mammals. For several reasons, scientists have been reluctant to conduct research on captive marine mammals to determine the SEL that would cause PTS.

Comment MMPAC12: A Federal agency notes that the Navy has defined ''harm'' as the onset of TTS, and that this implies ''injury,'' while NMFS believes that TTS is not an injury, but rather an impairment, and therefore constitutes only Level B harassment. This distinction seems ill-founded.

Response: The biological basis for considering TTS as only Level B harassment has been discussed or referenced previously in this document. The U.S. Navy released the Draft EIS to the public on July 30, 1999 (64 FR 41420) and NMFS published an ANPR on October 22, 1999 (64 FR 57026). When the Navy was writing the Draft EIS, NMFS considered TTS to be both Level A and Level B harassment (63 FR 66069, December 1, 1998). It was not until the period between the release of the Navy's Draft EIS for the shock trial of the USS WINSTON S. CHURCHILL (64 FR 69267, December 10, 1999) and NMFS' independent evaluation of the Navy's TTS proposal as noted in the CHURCHILL proposed rule on December 12, 2000 (65 FR 77546), that the issue came to general attention. During that time, the issue of TTS being categorized as only Level B harassment was still a proposal by NMFS and open to public comment until January 26, 2001. A final decision on TTS being limited to Level B harassment was not made by NMFS until May 4, 2001 (66 FR 22450). While the Navy was aware of the scientific debate, because the comment period on the Navy's Draft EIS ended on October 28, 1999, and no comments were submitted that directly addressed this issue (comments were focused on the validity of terms such as non-injurious harassment and non-serious injury), the Navy's ability to amend the Final EIS on this issue was limited. Additionally, the Navy's Final EIS was released in January, 2001, well prior to NMFS' final determination that TTS was limited to Level B harassment on May 4, 2001 (66 FR 22450). As a result, the Navy retained the more conservative approach and considers TTS to be Level A harassment. Therefore, while TTS is not an injury biologically, NMFS accepts the Navy's conservative determination to consider TTS as a potential injury for this action and will consider all incidental harassment takings that occur within the 180-dB isopleth, under this action, as Level A harassment.

Comment MMPAC13: A number of commenters believe that NMFS has redefined the definition of ''harassment.'' Some are concerned that NMFS' definition of Level B harassment as an action that causes a significant disturbance in a biologically important behavior is not consistent with the MMPA, which states that Level B is the ''potential to disturb marine mammals or marine mammals stocks in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' Other commenters are concerned that NMFS and the Navy underestimate the potential for behavioral impacts by narrowing the definition of what behavioral impact is. This new definition narrows the Congressional harassment definition from ''disruption'' to an unclearly defined ''significant disturbance'' and ''behavioral patterns'' to unspecified group of behaviors.

Response: First, for those species of marine mammals capable of hearing sounds from the SURTASS LFA sonar signal, simply hearing the acoustic signal without reacting to that noise is not considered by NMFS to be a

disruption of biologically important behavior. Second, as NMFS has noted previously (66 FR 43442, August 17, 2001; 66 FR 22450, May 4, 2001; and 66 FR 9291, February 7, 2001), for small take authorizations, NMFS considers a Level B harassment taking to have occurred if the marine mammal has a significant behavioral response in a biologically important activity. Under an interpretation of ''harassment,'' as broad as some have suggested the MMPA requires, an incidental taking could be presumed to occur for even a single pinniped lifting or turning its head to look at a passing pedestrian, offshore watercraft, aircraft or dolphins riding a boat's bow wave. For those takings that are clearly incidental to an otherwise lawful activity, NMFS believes that such a strict interpretation was not intended by Congress, when it amended the MMPA in 1994 and added a definition for harassment.

The term ''Level B harassment'' is defined in the MMPA as ''any act of pursuit, torment, or annoyance which * * * has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' In this context, a behavioral pattern means a composite of biological traits characteristic of an individual or of a species. Therefore, to disrupt a behavioral pattern, the activity would need to disrupt an animal's normal pattern of biological traits or behavior, not just cause a momentary reaction on the part of a marine mammal. Furthermore, if the only reaction to an activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out the behavioral pattern for that species of marine mammal, NMFS considers the activity not to have caused an incidental disruption of the behavioral pattern, provided the animal's reaction is not otherwise significant enough to be considered disruptive due to length or severity. For example, if there is a short-term change in breathing rates or a somewhat shortened or lengthened diving sequence that is within the animal's normal range of breathing patterns and diving cycles but there is not a disruption to the animal's overall behavioral pattern (i.e., the changes are not biologically significant), then these responses do not rise to a level requiring a small take authorization or, if under a small take authorization, does not constitute an incidental take. Similarly, bow-riding dolphins are within their normal behavioral patterns and, therefore, are not being ''taken'' for purposes of the MMPA.

Examples of significantly disrupted behavior would be where pinnipeds flee a haulout beach or rookery en masse due to a disturbance, or animals either leave an area of habitation for a period of time, or diverge significantly from their migratory path to avoid either an acoustic or a visual interference. Non-significant behavioral responses would be when only a few pinnipeds leave the haulout or mill-about, but many pinnipeds are alert to the disruption; or when marine mammals make minor course corrections that are not discernable either to observers or directional plotting, and which require statistical manipulation in order to determine that a course correction has taken place. For the action under consideration in this document, it is the behavioral response of marine mammals to the SURTASS LFA sonar signal (such as an overt avoidance behavior, a more than momentary modification or disruption in communication or feeding patterns through masking, or behavioral response due to an impairment to hearing) that is the biological response that is considered to be a taking by Level B harassment.

Comment MMPAC14: Commenters believe that NMFS' calculation of species ''take'' is based on a fundamental misinterpretation of law.

Response: See RTC MMPAC 13. The risk continuum developed by the Navy for this activity makes the distinction of whether the response is behaviorally significant, and whether the animal is involved in a biologically important activity at the time, through implementation of the ''B,'' ''A,'' and ''K'' parameters, which is based on the best science currently available (please refer to the Navy Final EIS (Subchapters 4.2.3.2 and 4.2.5) for definitions and application). Therefore, the estimates of Level B harassment found in Table 4.2–10 of the Final EIS and Table 4–10 of the Navy's application provides the best scientific estimate for Level B harassment takings in accordance with the definition of ''harassment.''

Comment MMPAC15: A Federal agency interprets the proposed rule as establishing TTS as the lower level for harassment, and thus, take. This interpretation could undermine meaningful consideration of behavioral effects that occur at sound levels below those that may result in TTS.

Response: The preamble to the proposed rule makes clear that NMFS considers all significant behavioral reactions, not just TTS-related reactions by marine mammals that result from SURTASS LFA sonar, to be a Level B harassment taking under these regulations.

Comment MMPAC16: LFS SRP information conducted on humpback whales demonstrates that LFA sonar operations have the potential to disturb the behavior of humpback whales, and, therefore, meet the MMPA's definition of Level B harassment. Navy modeling also demonstrated the potential for level B harassment.

Response: Phase III of the LFS SRP did not demonstrate any significant changes to biologically important humpback whale behavior (see TR1). Also, see RTC MMPAC13 on NMFS' response regarding Level B harassment. However, because there is a potential for incidental harassment, the Navy is seeking authorization for the incidental taking of marine mammals under the MMPA.

Comment MMPAC17: One organization states that any conclusion based on there being no takings that are significant below RLs of 180 dB may be misleading. LFA sonar should be disallowed until this can be proven. Another commenter states that scientific evidence suggests that a level of about 120 dB is a reasonable assumption for serious impact. However, this would include a very large area and is not ''relatively small.''

Response: There is no requirement in section 101(a)(5)(A) of the MMPA that the area be small, only that there be a specified geographic region.

Both the proposed rule document and the Navy's Final EIS address the potential for significant change in biologically important behavior below 180 dB RL. While there have been several studies that have demonstrated responses of marine mammals to exposure levels ranging from detection threshold to 120 dB (See the Final EIS at 4.2–26 and 4.2–27), NMFS is unaware of any scientific research that suggests that a level of 120 dB is a reasonable assumption for ''serious impact.''

Comment MMPAC18: The Navy should consider SPL under 150 dB as a more appropriate standard to ensure that the LFA sonar will have a negligible impact on marine mammals and their stocks. This is supported by Tyack (1998) and Tyack and Clark (1998).

Response: It is not clear what was meant by ''appropriate standard.'' However, imposing mitigation to the 150 dB isopleth is neither practicable nor necessary. Based on the LFS SRP, at 150 dB only 2.5 percent of the marine mammals exposed to the LFA sonar sound would likely show a significant behavioral response. Effective mitigation to this distance would have eliminated the need for a small take

authorization. Since that is not possible, the Navy applied for a small take authorization, and, to reduce impacts to the lowest level practicable, designed the HF/M3 sonar to protect marine mammals from injury (i.e., down to the 180 dB isopleth). Based on the risk continuum, NMFS considers a Level B harassment taking will occur at levels between 119 dB and 180 dB and takes that number into consideration in making the negligible impact determinations later in this document.

Small Numbers

Comment MMPAC19: Several commenters believe that fifty percent of the animals within the 165 dB RL zone will be ''biologically affected.'' This hardly constitutes a ''small take,'' and could result in large numbers of marine mammals being harassed or non-seriously injured.

Response: The risk continuum states that at a ''single ping equivalent'' SPL of 165 dB the risk of a significant change in a biologically important behavior is 50 percent. Thus, for each animal that is exposed to an SPL of 165 dB, it has a 50-percent chance of having a significant change in a biologically important behavior. This is fully explained in Subchapters 4.2.3 through 4.2.5 of the Navy's Final EIS.

This does not mean that 50 percent of the total marine mammal population or stock is potentially affected biologically under the calculations for the risk continuum, but only that portion of the population that is within the acoustic ray path of SURTASS LFA sonar at those times and locations where the SURTASS LFA sonar ray path intersects the portion of the water column wherein marine mammals may reside. Refer to the discussion on acoustic ducting earlier in this document and to either Figure 1 of this document or Figure B–3 of the Navy's Final EIS for a diagram of the ray path expected in approximately 80 percent of SURTASS LFA sonar transmissions.

Comment MMPAC20: One Federal agency believes that NMFS has melded the small numbers criterion and the negligible impact criterion into a single criterion, contrary to Congressional intent. It states that NMFS needs to make separate findings that only small numbers of marine mammals will be taken incidental to the activity in question and that the effects will be negligible.

Response: The regulations at 50 CFR 216.103 define ''small numbers'' to mean ''a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.'' That definition was first proposed on March 3, 1982 (47 FR 9027). During the public comment period on the proposed definition, NMFS received and considered a similar comment. NMFS' response (47 FR 21248, May 18, 1982) was as follows:

> In discussing the term ''small numbers,'' the House Report recognizes ''the imprecision of the term but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits. The Committee intends that these provisions be available for persons whose taking of marine mammals is infrequent, unavoidable, or accidental.'' The NMFS does not believe that the term can be expressed as an absolute number or percentage or be defined in any absolute terms. However, NMFS feels that by defining ''small numbers'' to mean a portion of a marine mammal species or stock whose taking would have a negligible impact, an upper limit is placed on the term, and the phrase effectively implements the Congressional intent underlining the new section 101(a)(5) of the MMPA.

NMFS continues to believe that its regulatory definition is consistent with Congressional intent.

Comment MMPAC21: Two commenters recommend that NMFS revise its regulatory definition of ''small numbers'' to reflect the language of, and the intent behind, the statutory provision.

Response: See RTC MMPAC20. NMFS invites interested persons to submit any information regarding an alternative workable interpretation of the term ''small numbers'' for consideration. This may also be in conjunction with a petition for rulemaking.

Comment MMPAC22a: Several commenters believe that the takings do not meet the MMPA's definition of ''small''; and several noted that the abundance of marine mammals within identified species and stocks that may be ''taken'' by LFA exceeds any reasonable interpretation of the statute's ''small number'' provision. Takes are not ''negligible.'' For example, during each year of operation and with all of the mitigation and monitoring that the Navy has proposed, more than 16 percent of the blue whales in the eastern North Atlantic, more than 10 percent of the beaked whales in the Mediterranean Sea, and more than 12 percent of the elephant seals in the eastern North Pacific will be affected.

Response: The commenters have focused on three of the four highest modeled levels of take and ignored statements that the AIM accounted for the ''worst case'' analysis, not the situation that will most likely take place by scheduling SURTASS LFA sonar missions to avoid areas and times of increased marine mammal abundance. Also, the commenters have misinterpreted the modeling in the Final EIS, and thus overstate the effects.

The annual percentages shown in the Final EIS Tables 4.2–11 and 4.2–12 were provided as example scenarios if the Navy were to operate 12 annual operations in the sites listed in row two of the tables. These locations were randomly selected; other site selections can be made by readers by taking a similar number (12) of modeled sites from table 4.2–10. This may result in higher or lower estimates depending upon whether the Navy will operate off the west coast of North America or, for example, the North Korea Strait. Thus, using the example from the commenter, 12.4 percent of the elephant seals will be affected only if SURTASS LFA sonar operated in both offshore central California for one mission (10.76-percent impact) and offshore Washington (1.65 percent impact) on another mission. If one mission operated offshore central California (10.76 percent) while a later mission operated offshore San Nicolas Island (7.90 percent impacted), 18.6 percent of the northern elephant seals would be impacted. However, this scenario would occur *only* if both missions took place during the two relatively short periods that northern elephant seals are concentrated in California waters for either molting or breeding. Most of the time much smaller percentages would be affected as the northern elephant seal is widely scattered across the North Pacific Ocean during the remainder of the year.

Second, the ''acoustic modeling sites'' used in the AIM were chosen to represent conditions that would model the highest potential for effects from the use of SURTASS LFA sonar (See Final EIS Subchapter 4.2.1). These ''worst case scenarios'' included areas close to land (where biological densities are higher and where the Navy would not be authorized to take marine mammals at SPLs greater than 180 dB), best sound propagation conditions for the area (which would not always occur), and season of highest marine mammal density (areas the Navy would routinely avoid because of the potential for excessive shutdowns). Moreover, because the Navy will operate no more than two SURTASS LFA sonar vessels during the next five-year period under this authorization, the percentages of marine mammal stocks depicted as examples in Table 4.2–11 and 4.2–12 of the Final EIS are overestimates since they provide an example of take estimates for a hypothetical 12 missions per ocean area, not the now-projected 6 missions per vessel. Given that it is

more likely that SURTASS LFA sonar missions will occur in the open ocean, and that the Navy will rerun AIM when planning missions for new or different areas to avoid certain areas during biologically sensitive seasons, NMFS believes that the estimates of taking by harassment incidental to SURTASS LFA sonar provided in the Final EIS are significantly higher than the more realistic 1 to 2 percent (or less) of affected stocks during a single 20-day mission. The negligible impact determination is discussed in later comments.

Comment MMPAC22b: One organization states that although abundance data has not been provided, the magnitude of the numbers involved in such percentages can be grasped considering that there are approximately 40,000 elephant seals in the NMFS' Pacific region, a small sliver of the total area designated here as the ''eastern North Pacific.'' Add to this number the elephant seal numbers projected for each of the other areas, add these to the aggregate numbers for every other marine mammal species, multiply by five (for the number of years of operation authorized by NMFS' rule), and one has the total number of marine mammals that the Navy believes are potentially affected by LFA deployment. Since each animal may be taken a number of times, the number of takes would presumably be even higher.

Response: Abundance data for marine mammals, used in the AIM, was provided by the Navy in Table 4.2–4 of the Final EIS. Also, the commenter has misinterpreted the exercise conducted in that part of the Navy's Final EIS and also the definition of ''Eastern North Pacific'' in Table 4.2–11, thereby exaggerating the impacts. Furthermore, the Eastern North Pacific is not a ''small sliver of the Pacific region designated by NMFS,'' but instead represents the entire Eastern North Pacific Ocean and encompasses the entire geographic region inhabited by northern elephant seals. This is apparent by noting that the modeled sites randomly selected for this example (as explained in the Final EIS) were: (1) North Kauai, (2) offshore Washington, (3) Gulf of Alaska, and (4) offshore California. Combining the offshore California (10.76 percent of elephant seals) and offshore Washington (1.65 percent of the elephant seals) site models indicates that 12.4 percent (10.76 + 1.65 percent) of the northern elephant seal population might be harassed, if the Navy conducted two missions in the Eastern North Pacific during the period of time when elephant seals are in abundance in offshore California and in Washington waters. Therefore, only if a SURTASS LFA sonar mission took place offshore California when elephant seals were concentrated in that area would 10.76 percent of that portion of the elephant seal population inhabiting that area be subject to a significant behavioral response. At other times, impacts would be limited to lower levels such as 1 to 2 percent (as noted for offshore Washington).

While it is proper to add the aggregate of other species to the total taking expected, a proper analysis would need to take the aggregate for the normal maximum of six missions per vessel per year. Table 4.2–11 and 4.2–12 have provided representative examples, but for 12 missions, not six, in each ocean basin.

Finally, as explained several times in the Navy's Final EIS, the AIM calculates for the probability of animals receiving multiple pings. Therefore, these are not additive to the results found in Tables 4.2–11 and 4.2–12 as the commenter suggests.

Comment MMPAC23: A Federal agency recommends that NMFS estimate the number of marine mammals that potentially could be taken in the course of the proposed 5-year authorization and provide its rationale for concluding that this constitutes a ''small number.'' Another commenter asks what levels NMFS is using to define ''small take.'' They note that on page 15387 the preamble to the proposed rule (66 FR 15375, March 19, 2001) states, ''NMFS believes that the potential effect by SURTASS LFA sonar operations will be limited to only small percentages of the affected stocks of marine mammals * * .'' Define ''small percentage'' and the rationale for considering the Final EIS results to constitute ''small numbers.''

Response: The requirement under the MMPA is to determine that the activity is resulting in the take of ''small numbers'' of marine mammals; there is no requirement to define ''small take.'' See RTC MMPAC20 regarding how NMFS applies its definition of ''small numbers'' in 50 CFR § 216.103 under section 101(a)(5)(A) of the MMPA.

The AIM inputs for each species were provided in Table 4.2–4 of the Navy Final EIS and Table 4–4 of the Navy application. These tables provide an estimate of the stock size for each species group and the size of the seasonally resident marine mammals near each AIM site that was used in the modeling. Modeling by the AIM then provides estimates of the percentage of the portion of the marine mammal population(s) that might sustain a biologically significant response to the SURTASS LFA sonar signal. These percentages are provided in Table 4.2–10 in the Final EIS and Table 4–10 of the application and used by NMFS to estimate incidental harassment levels.

While NMFS presently does not know which areas the Navy plans to conduct its missions in the upcoming year, the Navy will be responsible for incorporating this type of analysis for each biogeographic province in which it is planning to conduct missions in order to estimate Level B harassment percentages. This will be done by the Navy in each annual mission intention letter the Navy submits to NMFS using AIM.

Negligible Impact

Comment MMPAC24: Because of lack of information, the Navy cannot prove ''no impact'' from LFA.

Response: The Final EIS and the Navy's application do not state there would be no impact. If there was no impact, an LOA for the incidental taking of marine mammals would not be required.

Comment MMPAC25: The Navy's request for a ''small take'' authorization is based on their conclusion that below 180 dB the proposed action will have a negligible effect on the survival and productivity of marine mammals (that is, have no biologically significant effect).

Response: That is correct. In the Final EIS at ES–25, the Navy states,

> In summary, under Alternative 1, the potential impact on any stock of marine mammals from injury is considered negligible, and the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. However, because there is some potential for incidental takes, the Navy is requesting a Letter of Authorization (LOA) from NMFS for the taking of marine mammals incidental to the employment of SURTASS LFA sonar during training, testing and routine military operations under the Marine Mammal Protection Act (MMPA), and is consulting with NMFS under Section 7 of the Endangered Species Act (ESA).

Comment MMPAC26: A number of commenters believe that the impact of takings on the species or stocks of marine mammals does not meet the MMPA's definition of ''negligible.''

Response: In order to allow a taking under section 101(a)(5) of the MMPA, NMFS must find that the total taking by the activity will have a negligible impact on the species or stock. The Navy, as the party seeking an authorization under this section, has the burden to demonstrate, through the best scientific information available, that only a negligible impact is *reasonably* likely to occur. This, NMFS believes,

the Navy, has met, in part, through the LFS SRP, which is discussed elsewhere in this document.

NMFS defines ''negligible impact'' as the impact resulting from the specified activity that cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock(s) through effects on annual rates of recruitment or survival (50 CFR 216.103). This finding is made in reference to the marine mammal species or stock (as defined in section 3(11) of the MMPA), and not with reference to the effects on individual animals.

If mitigating measures would render the impacts of a specified activity negligible, when it might not otherwise satisfy that requirement, NMFS may make a negligible impact finding subject to such mitigating measures being successfully implemented (53 FR 8473, March 15, 1988; 54 FR 40338, September 29, 1989).

The analysis of any adverse effects to recruitment or survival must be conducted within the framework of the management goal of the MMPA, (*i.e.,* the maintenance or attainment of an OSP level for each population stock of marine mammals (see section 2(2) and 2(6) of the MMPA and 53 FR 8473, March 15, 1988). As a result, since 1989 (54 FR 40338, September 29, 1989), NMFS has, with later minor modification, applied the definition of ''negligible impact'' in the following manner: if a request under section 101(a)(5) of the MMPA involves potential impacts to a ''depleted'' population, then a determination of negligible impact can be made only if the permitted activity is not likely to significantly reduce the increase of that population or prevent it from ultimately achieving its OSP. On the other hand, if a nondepleted population is involved, then a determination of negligible impact can be made only if the permitted activity is not likely to reduce that population below its OSP.

However, this does not mean that an OSP determination is required to make a negligible impact determination, as section 101(a)(5)(C)(ii) clearly exempts issuance of specific regulations from compliance with the formal rulemaking requirements of section 103 of the MMPA. Recognizing the complex and controversial nature of the OSP concept, NMFS has modified this policy so that a determination of negligible impact can be made only if the permitted activity is not likely to significantly reduce the numerical increase of that population or prevent it from ultimately achieving its maximum net productivity level (MNPL)(NMFS, 1995). If a ''nondepleted'' marine mammal population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its MNPL (NMFS, 1995). The determination of negligible impact, therefore, even when the taking is limited to incidental harassment, will take into account the status and the particular biological requirements of the species or stock, as well as the effects of the incidental taking on the rate of recruitment (NMFS, 1995). That said, however, NMFS qualified that by stating that ''Qualitative judgments will be made on a case-by-case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned.''

Many factors are used in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to its MNPL (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable or unknown, the size and distribution of the population, and existing impacts and environmental conditions.

Finally, the MMPA clearly indicates that some level of adverse effects involving the taking of marine mammals (both depleted and non-depleted) can be authorized as long as the impact is negligible. This guidance has been followed by NMFS in making its determination on whether takings by harassment incidental to SURTASS LFA sonar operations are negligible.

Comment MMPAC27: Two commenters stated that NMFS cannot make a negligible impact determination since the population stock sizes and other information on many species is lacking. How can NMFS estimate takes, or impact of takes, when stock size, composition, status, trends, and distribution cannot be defined? It is impossible to determine the size, sex or age of the cetaceans harassed; thus making it impossible to determine the effects of the LFA sonar on the cetacean population.

Response: There is no requirement in the MMPA to determine the size, sex or age of impacted marine mammals prior to authorizing an incidental take. While this information is valuable to NMFS scientists when takings involve significant mortality (as in whaling), when takings are limited to incidental harassment that will be limited in both time and scope, this information is not critical. Since takings by SURTASS LFA sonar are not expected to result in the death or injury of marine mammals, age, sex, and size parameters are not necessary for assessing impacts on populations; all segments of the population are assumed to be affected equally.

When information is lacking to define a particular population or stock of marine mammals then impacts are to be assessed with respect to the species as a whole (132 Cong. Rec. S16304–05, October 15, 1986; 54 FR 40338, September 29, 1989). As shown in this document and in the Navy Final EIS, NMFS and the Navy have followed this Congressional instruction when necessary in this action.

Comment MMPAC28: Some commenters note that the scientific results are ''speculative'' as they are based on research on only 3 species; there are information gaps on many species.

Response: Please refer to the appropriate RTCs in this document regarding data gaps. The Navy's LFS SRP studies filled in data gaps on the potential effects of LF sound on marine life, and the ongoing monitoring and research programs instituted by the Navy will continue to reduce areas of incomplete information and provide invaluable data that are presently unavailable.

Congress (see 132 Cong. Rec. S16304–5, October 15, 1986) noted that

> If the potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. In such a case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact.

When applying this balancing test, NMFS thoroughly evaluates the risks involved and the potential impacts on marine mammal populations (54 FR 40338, September 29, 1989). Determinations are made based on the best available scientific information and later supported or negated through the required monitoring program (NMFS, 1995).

Comment MMPAC29: The response to Comment 46 in the preamble to the proposed rule (66 FR 15375, March 19, 2001)) stated: ''NMFS must make its determination under section 101(a)(5)(A) of the MMPA based on the best scientific information available.'' However, NMFS held the non-peer reviewed LFS SRP results in higher regard than published peer-reviewed work (Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; and Balcomb, 2001).

Response: While NMFS must make its determinations under the MMPA and ESA based on the best scientific information available, the response to the comment cited here was in regard to the Navy meeting its NEPA requirements, not on the validity of the

data used by NMFS. In that regard, NMFS uses all valid data and information that are available. However, NMFS also notes that Balcomb (2001) is a letter submitted to the Navy, dated February 23, 2001, concerning his untested hypothesis of the cause of the mass stranding of beaked whales in the Bahamas. This letter has not been published or formally peer reviewed. Simmonds and Lopez-Jurado (1991) and Frantzis (1998) were published scientific correspondences based solely on observations. The three phases of the LFS SRP were based on field research, conducted by independent scientists, which was designed simply to test a specific hypothesis. Some of the results have been peer-reviewed prior to publication (Miller *et al.* (2000) and Croll *et al.* (2001)). See RTC 4–5.18 and 4–5.19 of the Final EIS for more information. However, NMFS reviewed all data available to it when making the decisions found in this document.

Comment MMPAC30: A Federal agency is concerned about the basis for a negligible impact determination because information available clearly indicates that the potential effects of SURTASS LFA sonar operations cannot be described with certainty. NMFS needs to make separate findings that only small numbers of marine mammals will be taken incidental to the activity *and* (not or) that the effects on the distribution, size, and productivity of the affected species and populations will be negligible. NMFS has not examined all of the ''best information available'' and sufficient gaps in knowledge exist to prevent NMFS from a determination of ''negligible impact.''

Response: Please refer to the RTCs MMPAC 27 and 28 regarding appropriate action that NMFS needs to take when making negligible impact determinations when faced with unavailable, uncertain or speculative information. In addition, concerns regarding data gaps and alleged ignored evidence have been addressed previously in this document (see RTCs SIC1 though SIC3 for example). RTC MMPAC29 discusses another set of information. NMFS believes that it has used all relevant information and data in making its determinations under this action. Therefore, NMFS is unaware of what relevant ''best information available'' was not utilized in this action. For the RTCs regarding separate determinations for ''small numbers'' and ''negligible impact,'' please refer to RTC MMPAC20.

Comment MMPAC31: The Navy failed to meet the legal standard and adequately demonstrate that the take will have a negligible impact on the affected species and stocks of marine mammals because: (1) Only three of more than 48 proposed affected marine mammals were tested; (2) lack of data on abundance, natural history, geographic distribution, migration routes and calving and breeding grounds; (3) specific numbers by type of taking not provided; (4) all marine mammals potentially taken must be considered; and (5) effects of underwater noise on marine mammals are variable and largely unknown for many species.

Response: The information that was necessary for NMFS to agree or disagree with the determinations made by the U.S. Navy that the deployment of SURTASS LFA sonar will have no more than a negligible impact on marine mammals was provided in the Navy's Draft and Final EISs. In particular, the information cited above as lacking can be found in Chapter 3 (specifically refer to Tables 3.2–3 (mysticetes), 3.2–4 (odontocetes), 3.2–5 (otariids) and 3.2–6 (phocids), and Chapter 4 (specifically refer to Tables 4.2–3 (diving behavior), 4.2–4 (distribution, abundance and density) and 4.2–10 (stock percentage affected)). In its Final EIS, the Navy provided estimates of the percentage of marine mammal stocks that might sustain a biologically significant response rather than the number of animals. NMFS concurred in this approach for the Draft and Final EIS because it believes that this is appropriate considering the global nature of SURTASS LFA sonar operations.

In addition, the Final EIS provides a clear explanation of the assumptions made in the AIM and in the Final EIS to account for variability in marine mammal response (both on a species basis and on an individual basis) for all species and stocks of marine mammals. Since the Navy has taken a highly conservative approach at all stages in estimating impacts on marine mammals from LF sounds, complete data on each and every species of marine mammal is not necessary for NMFS to make a negligible impact determination. The fact that the Navy will collect additional data, and conduct more research, over the next 5 years and that NMFS can suspend an authorization if information or data indicates that the takings are having more than a negligible impact, provides assurance that marine mammal species and stocks will not be significantly impacted.

Lowest Level Practicable

Comment MMPAC32: Several commenters believe that NMFS has not ensured that the taking was at the lowest level practicable.

Response: Section 101(a)(5)(A)(ii) of the MMPA requires NMFS to ''prescribe regulations setting forth permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impacts on species or stocks and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance * * *.'' NMFS believes that the mitigation measures and additional interim operational restrictions required by these regulations on the Navy's operation of SURTASS LFA sonar ensures that the takings will be at the lowest level practicable. Mitigation measures include maintaining SURTASS LFA sonar generated sound field below 180-dB at a distance of 12 nm (22 km) miles from any coastline, including islands, OBIAs and other protected areas, designating OBIAs and a process for nominating new OBIAs, establishment of a shutdown protocol to protect marine mammals in the vicinity of the SURTASS LFA source, and the tripartite marine mammal monitoring system ensuring above 95-percent detection capability for marine mammals prior to entry into the 180-dB safety zone. Additional operational restrictions will be included in annual LOAs as an interim requirement pending the results of the Navy's LTM, reporting and research programs. These interim measures include establishment of shut-down criteria of the SURTASS LFA sonar whenever a marine mammal is detected within the 1-km (0.54-nm) buffer zone beyond the SURTASS LFA mitigation zone (180-dB sound field), a requirement not to broadcast the SURTASS LFA sonar signal at a frequency greater than 330 Hz to minimize the possibility of resonance; and planning missions to ensure no greater than 12 percent of any marine mammal stock is incidentally harassed during the period of each LOA's effectiveness (1 year). Additional protection will be afforded marine mammals by the Navy's mandate that SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB.

Mitigation measures suggested by commenters that NMFS believes to be impractical have been addressed in RTCs MIC15 through MIC17 in this document.

Total Taking

Comment MMPAC33: The multiple deployments of LFA sonar in conjunction with potential deployment

of other nations' LF sonar has not been addressed and may have a devastating cumulative effect on marine mammals.

Response: The Navy analyzed the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that could potentially be affected. Since this take authorization covers the use of no more than two SURTASS LFA sources, no further analyses are required by NMFS.

Moreover, NMFS is unaware of the use by other nations of SURTASS LFA sonar, or other systems that use an LF source (i.e., 1 kHz or below), except for the SACLANTCEN/NATO TVDS system. The cumulative impacts of the use of this system in addition to a single SURTASS LFA sonar system operating in the same ocean basin was analyzed as described in RTC SIC79.

In addition, under section 101(a)(5)(A) of the MMPA, it is NMFS' responsibility to assess the total taking by the specified activity during the specified time period for making a negligible impact assessment (see 50 CFR 216.102(a)), not the total taking by all low frequency noise sources. Finally, cumulative effects that are reasonably foreseeable were considered in the Navy's Final EIS (see Chapter 4.4) and cumulative effects that are reasonably certain to occur have been considered in the consultation for this activity under section 7 of the ESA.

Other MMPA Concerns

Comment MMPAC34: What are the consequences for LFA sonar transmissions if behavioral changes are observed? At what point is the action considered a ''take''?

Response: If a significant behavioral response is observed, NMFS considers a ''taking'' to have occurred. If behavioral changes are observed, observations are noted and reported to NMFS as required by the regulations and LOA. Because Level B harassment takings are authorized by the regulations and LOA, there would not be any short-term consequences, such as suspension of transmissions.

Comment MMPAC35: There are numerous other sources of noise in the oceans that have not received the level of scrutiny that this sonar has received (*i.e.,* ocean shipping), and the commenter believes that NMFS is obligated under the MMPA to identify such noise sources to review their potential impact on marine mammals. A coherent noise criteria policy is needed for use in all oceans involving all sources of anthropogenic noise.

Response: NMFS recognizes that there are many sources of anthropogenic noise in the ocean, including commercial shipping, recreational boating, offshore seismic, maritime construction, and oceanographic/fishery research. When necessary, NMFS works with those who create noise in the marine environment to ensure that marine mammals are not taken in violation of the MMPA. However, NMFS also recognizes that many sources of maritime noise are by activities that either are not subject to the MMPA (e.g., non-U.S. shipping outside the U.S. EEZ), or do not qualify for authorizations under the MMPA (e.g., non-U.S. shipping within the U.S. Exclusive Economic Zone (EEZ)). For those activities, a new approach may be necessary, either through international bodies, or additional U.S. legislation. In this regard, NMFS expects to complete a draft acoustic policy in the near future and is also planning to convene a workshop on commercial shipping noise and impacts on marine mammals.

Comment MMPAC36: Regulations from this issue (SURTASS LFA sonar deployment) will become the standard for ocean noise management in the U.S., and, by default, worldwide. Giving LFA the ''green light'' will completely open up the LF noise band to international commercial, industrial, and military exploitation.

Response: Issuance of an LOA to the Navy for this activity will have no effect on activities world-wide that produce low-mid-or high-frequency sounds incidental to conducting its activity. More persistent, anthropogenic noise sources including international commercial shipping (*e.g.,* 6,000 large vessels entering Los Angeles/Long Beach, CA harbor annually), U.S. naval activities, seismic surveys for oil and gas deposits (150 vessels world-wide), international offshore construction, oceanographic research (including mapping ocean and harbor features), and, in certain areas, recreational boating would continue in any case. Positive effects of this activity will be to refine our understanding of appropriate mitigation measures that could be used for other acoustic sources.

Proposed Rule Concerns

Comment MMPAC37: Several commenters believe that the proposed action has not met the requirement of the MMPA for a ''specific geographical region.'' The MMC states that the rationale for concluding that the 16 areas constitute specific geographic regions is too general—it glosses over biogeographic variation that is essential to understand (1) the distribution and life history features of the many and varied species that may be affected by SURTASS LFA sonar operations and (2) the nature and extent of the resulting effects. A Federal agency believes a more narrow geographic scale would be likely to enhance the assessment of effects. One organization notes that while NMFS has divided the world's oceans into 16 areas, each one enormous in size, the MMPA Legislative History specifically rules out this sweeping approach.

Response: NMFS defines ''specified geographical region'' as ''an area within which a specified activity is conducted and which has certain biogeographic characteristics'' (50 CFR 216.103). NMFS agrees that the 16 areas designated in the proposed rule document were not based on biogeographic characteristics as specified in the definition, but were based on other considerations by the U.N. Food and Agricultural Organization. In the proposed rule, NMFS invited additional comments on its preliminary determination. No comments were received that provided information or data on an alternative approach; the only comments received were that the proposed designations did not meet the statements made by Congress when the MMPA was amended in 1981. NMFS has reviewed the proposed specified geographic regions and has determined that a better approach is to adopt the biogeographic characteristics of biomes and provinces designed by Longhurst (1998), but with some modifications that were suggested by Longhurst (1998) in order to ensure that the specified geographic regions were in conformance with the MMPA and NMFS' definition found in 50 CFR 216.103. As revised by this final rule, there will be 15 biomes and 54 specific geographic regions under those 15 biomes, called provinces, in which the Navy may potentially operate. In addition, this rule creates several subprovinces for most of the designated provinces that are in coastal areas. Designations smaller than provinces in the offshore biomes are not biologically justified.

NMFS believes that adoption of the Longhurst approach meets the statutory mandate that the taking by the activity be within a ''specified geographical region'' since a biome is the most likely geographic region to contain the majority of a specific marine mammal stock, especially those that are migratory. While admittedly, the Longhurst schematic was designed for

plankton, it is the best scientific application available for designating specified geographic regions because no biogeographic concept has been designed for marine mammals and, in general, the distribution of marine organisms at higher trophic levels resembles the general geographic patterns of primary productivity, with the largest aggregations concentrated in coastal areas and zones of upwelling (Longhurst, 1998).

What this means for this authorization is that the Navy will be required to notify NMFS annually as to which provinces or subprovinces it intends to operate SURTASS LFA sonar system in the upcoming year, and the extent of take (by harassment) it expects to encounter during a mission. These calculations will be based on new modeling using AIM.

Comment MMPAC38: The conditions and effects within the broad geographic regions proposed by NMFS cannot be considered ''substantially the same.'' Congress clearly intended a more precise and smaller scale.

Response: In 1982, House Report 97–228 stated:

> The specified geographic region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same. Thus, for example, it would be inappropriate to identify the entire Pacific coast of the North American continent as a specified geographic region, but it may be appropriate to identify particular segments of that coast having similar characteristics, both biological and otherwise, as specified geographical regions.

Therefore, NMFS believes that it has met this Congressional intent by its present designations of 15 biomes and 54 provinces as specified geographic regions. These provinces and biomes effectively delineate the area wherein discrete population units reside thereby allowing NMFS to analyze impacts from SURTASS LFA sonar on a species and/or stock basis.

Comment MMPAC39: Several organizations believe that NMFS should establish the specified geographic regions based on physiographic characteristics such as undersea canyons, seamounts and other structures that might attract marine mammals.

Response: NMFS does not believe that the MMPA requires NMFS to designate specific, but minor, geographic regions based on physiographic characteristics such as undersea canyons, seamounts and other structures that might attract marine mammals. NMFS believes that this recommendation ignores the Congressional statement, cited in RTC MMPAC38, that specified geographic regions should not be larger than is necessary to accomplish the specified activity. Considering that the second and third, 5 to 10 km-wide (2.7 to 5.4 nm-wide), CZ ''ring'' for LFA sonar sounds can be upwards of 100 km (54 nm) and 150 km (81 nm), respectively from the vessel, small specific geographic regions as recommended would be functionally inappropriate.

Comment MMPAC40: A Federal agency recommends that NMFS describe in the final rule the species assemblages, their biogeography, and important life history characteristics of each of the proposed regions in sufficient detail to ascertain whether the effects on the diverse marine mammal assemblages throughout each region would be substantially similar.

Response: NMFS does not believe that this recommendation is warranted for this rulemaking document. Detailed information on the life history characteristics of the marine mammal populations in each of the biogeographic areas is presently unavailable, and is likely to be unavailable for decades to come. However, there is no scientific evidence to indicate that marine mammals in one area would react to the noise substantially differently from the same species in another area. Therefore, the best scientific information currently available on a species' life history parameters, that is relevant to the action, has been provided in the Navy's Final EIS (see in particular Subchapter 3.2.4—3.2.6). In addition, this information has been incorporated into the AIM which makes very conservative estimates of impacts on marine mammal species and stocks (see the Final EIS for details). For example, NMFS has no scientific information to indicate that mid- and high-frequency marine mammal hearing specialists would be affected to the same extent as low-frequency hearing specialists by the LF sounds of the SURTASS LFA sonar. However, the Navy has conservatively presumed, for this action, that these species could have a significant behavioral reaction to LF sounds, similar to those species most likely to be affected (*i.e.,* LF-hearing specialists such as the large whales that were studied during the LFS SRP). Therefore, if one considers all species and stocks to be affected (i.e., taken by harassment), there is no need to describe in detail, in this document, all life history parameters of all species within each geographic region.

The Navy, in its application and in both the Draft and Final EIS, provided significant information on each of the 31 areas modeled by the Navy. These modeled areas were provided in Table 4–1 of the application and 4.2–1 in the Final EIS. Additional areas will be modeled when information becomes available and all models will be rerun with the latest information prior to the Navy operating nearby. As mentioned in RTC MMPAC31, information on the biological parameters used in the modeling was provided in the text and numerous tables. Since NMFS has adopted the Navy's Final EIS as its own statement under NEPA as permitted by CEQ regulations (40 CFR 1506.3), it is not necessary to repeat that information here.

Comment MMPAC41: The rule should be in keeping with the requirements of section 101(a)(5)(B) of the MMPA, that LFA sonar operations should be suspended in and near (nominated OBIA) areas until it has been determined that such operations will not have more than a negligible impact on those species and stocks of marine mammals within the OBIA.

Response: OBIAs are mitigation measures that would reduce the potential level of impact on marine mammals to the lowest level practicable, not areas wherein NMFS has not made negligible impact determinations, or that takings would be more than negligible if the Navy were to operate within those areas. Since NMFS has made the necessary determinations under section 101(a)(5)(A) of the MMPA, designation of an OBIA is simply a mitigation measure designed to reduce marine mammal impacts to the lowest level practicable. However, it is highly unlikely that the Navy would conduct SURTASS LFA sonar operations within areas that might qualify in the future as OBIA areas simply because the abundance of marine mammals would increase the likelihood for SURTASS LFA sonar shutdowns due to marine mammal incursions into the safety zone. The Navy would likely find it preferable to move the SURTASS LFA sonar vessel to an area with a lesser density of marine mammals, than to continue incurring delays or suspensions of sonar transmissions.

Suspending operations in nominated OBIAs could be an incentive for opponents to the Navy SURTASS LFA sonar operations to render the small take authorization ineffective simply by nominating large numbers of areas as potential OBIAs, whether or not they might warrant inclusion as an OBIA. NMFS' process for designating OBIAs will prevent this.

Comment MMPAC42: A Federal agency believes that NMFS has not adequately addressed the requirement under the MMPA that a taking not have an unmitigable adverse impact on the availability of stocks of marine mammals for taking for subsistence uses. They note that while the bowhead whale is unlikely to be affected, other species taken by Alaska Natives for subsistence, including beluga whales and several pinniped species, occur within the area where operations could be conducted and are included in the list of species that could be covered by the authorization. They believe LFA sonar could cause localized shifts in the distributions of some stocks, and thus their availability to subsistence hunters.

Response: NMFS did not go into detail on this issue in the preamble to the proposed rule, or in this document, because an analysis of impacts on subsistence uses of marine mammals indicated an impact close to zero. In order to have an unmitigable adverse impact on subsistence hunting, an action must result in a reduction in availability of marine mammals to a level insufficient to meet the subsistence needs of Alaskan Arctic communities for marine mammals by: (1) Causing sufficient numbers of the marine mammal population subject to subsistence use to vacate subsistence hunting areas; or (2) directly displacing subsistence users; or (3) erecting physical barriers between the marine mammals and the subsistence hunters. SURTASS LFA sonar will not be deployed in Arctic waters so it will not impact subsistence hunting in the Bering, Chukchi or Beaufort seas. Beluga whale hunting is restricted to a single animal per year which is taken in northern Cook Inlet, Alaska, and therefore unlikely to be subject to SURTASS LFA sonar sounds, considering significant coastal sound attenuation prior to reaching Cook Inlet, in addition to other LF noise from nearby shipping and oil industry activities masking offshore noises. Sea lions and seals are harvested by natives on Kodiak Island and on the south side of the Aleutian Island Chain. These animals are usually shot at haul-outs or in nearshore areas. Therefore, considering the offshore location of SURTASS LFA sonar operations, it is likely that these nearshore animals would not be affected at all by any SURTASS LFA sonar sound.

Comment MMPAC43: A Federal agency recommends that NMFS consider ways to include the required information on mitigation, monitoring, and reporting requirements into the rule, rather than into the LOA. They state that the MMPA is clear that at least some of these information requirements are to be addressed in regulations rather than LOAs.

Response: The MMPA requires that regulations set forth requirements pertaining to the monitoring and reporting of the taking. These requirements, which were identified in the proposed rule's regulatory text, are found in the regulatory text of this final rule document. Specifically, monitoring requirements include the tripartite monitoring system and the conditions for conducting that monitoring. However, LOAs are issued and authorized under activity-specific regulations, therefore, they carry the same weight under the MMPA as the regulations for ensuring compliance with conditions. If detailed conditions are specified in regulations, modifications to conditions, for example improvements in monitoring and reporting, would require long lead times to implement, considering the lengthy process required for approval of regulations. Having detailed monitoring conditions in regulations would therefore hinder prompt remedial action if NMFS determined that it needed to amend conditions to improve the information being obtained under monitoring and reporting. Delaying the ability to obtain this information for a significant time simply is not warranted. For that reason, the LOA will contain specific conditions and instructions on mitigation, monitoring, and reporting, while the regulations will contain general requirements to comply with the MMPA.

Comment MMPAC44: The Navy cannot measure incidental takes over large ocean areas. There is no means to monitor Level B takes. Neither the proposed rule nor the Final EIS provide data or analyses to support the assumption that intermittent and relatively short-term behavioral disruptions will not affect the survival or productivity of individual marine mammals or the populations they comprise. Before issuing the proposed incidental take authorization, NMFS: (1) Needs to provide an adequate rationale to support this assumption, and/or (2) needs to augment the monitoring program to ensure that the information necessary to confirm the validity of this assumption is obtained.

Response: While the Navy is unable to directly measure or observe effects on marine mammals at ranges much greater than the 180–dB sound field due to inability to observe much farther from the vessel, such monitoring can be conducted under a research monitoring protocol. This is one of the highest priority research topics to be conducted over the next 5 years. NMFS expects the Navy will undertake a long term study in an area where it expects to conduct missions on a more frequent basis than normal. This will provide the Navy and NMFS with information on long-term trends. Being unable to prove a negative, that is, that there is no long-term impact on marine mammal stocks due to SURTASS LFA sonar, this research is the best alternative available and is supported by the findings of Swartz and Hofman (1991).

Not having direct evidence to date, NMFS must rely on supplemental information to support its findings of negligible impact. For example, In Jasny (1998), the author states:

> A modern-day supertanker cruising at seventeen knots * * * fills the frequency band below 500 Hz with a steady sonic blare, reaching levels of 190 dB or more; mid-sized ships such as tugboats and ferries produce sounds of 160 to 170 decibels in the same range. The cumulative output of all these vessels-container ships and tankers, oceanliners and dayboats, icebreakers and barges-is an incessant noise of near-constant loudness, outdone in the lower register only by the occasional earthquake or storm, or by the chance passing of some closer source.

With a single exception (icebreakers), the author has described southern California waters. With approximately 6,000 large vessels entering the Los Angeles-Long Beach harbors annually, long term effects from general LF noise should be evident at this (and similar) locations long before long-term effects could be detected from a short-term (72 hours out of 720 hours (30-day mission)) single source of low frequency noise operating in up to six different oceanic regions and affecting different marine mammal populations annually. Since marine mammal populations have not indicated survival or productivity difficulties in southern California—on the contrary increasing stock sizes of blue and gray whales and pinnipeds have taken place in that area—NMFS has determined that there will not be a more than negligible impact to those marine mammal stocks that are affected by SURTASS LFA sonar sound.

As mentioned elsewhere, NMFS presumes that animals would be affected by LFA sonar for a maximum of 72 hours out of each 30-day mission (presuming maximum 20-percent duty cycle) and that no marine mammal stock would incur an incidental harassment greater than 10 to 12 percent of that stock's size over the course of each LOA's period of effectiveness (1 year). In addition, the sound characteristics of SURTASS LFA sonar are such that marine mammals outside the sonar ray

path of SURTASS LFA sonar will not be subject to high levels of sounds (outside the sonar ray path, intensity will immediately diminish by 30 dB, or by 1,000 times that inside the ray path). Moreover, for a significant portion of the distance between the edge of the safety zone and when the first or second CZ deflects towards surface waters, the CZ, with its higher SPLs, will be below the area of the water column inhabited by marine mammals. All these facts support NMFS findings that there will not be more than a negligible impact on marine mammal stocks.

Comment MMPAC45: A Federal agency notes that in the Preliminary Conclusions of the Proposed Rule (March 19, 2001 (66 FR 15375) page 15389 first column), the term ''* * * mitigation measures to prevent injury * * *'' should be changed to read ''* * * mitigation measures to minimize injury (Level A harassment) * * *''

Response: NMFS concurs.

Comment MMPAC46: NMFS indicated that it would provide opportunity for public comment for ''substantial modifications'' to LOA requirements before such modifications are made, but provides no indication as to what would be viewed as a ''substantial modification.'' The final rule document should specify the nature of non-substantial modifications that could be made without public comment.

Response: This final rule document contains a discussion of the conditions of the LOA including prohibitions, requirements for mitigation, monitoring and reporting. Changes to these conditions would require a public comment period prior to implementation, unless NMFS determines that an emergency exists that poses a significant risk to the well-being of the species/stocks of marine mammals affected (see 50 CFR 216.106(e) and (f)). Non-substantial modifications were identified in the proposed rule and in this final rule. Essentially, non-substantial modifications include: (1) Renewing an LOA for an additional year, (2) listing of planned SURTASS LFA sonar operating areas, or (3) moving the authorized SURTASS LFA sonar system from one ship to another. They would also include amendments to the LOA that NMFS believes would clarify (but not change) the LOA conditions.

Comment MMPAC47: A state agency recommends that section 216.187 of the proposed rule should be amended to provide potentially affected states with timely notice of the Navy's application for an approval letter.

Response: NMFS does not consider it necessary to have an annual public review for each LOA. NMFS believes that the determinations made in this document provide the necessary findings required under the MMPA. Once these findings have been made, it is unnecessary for NMFS to reconsider them annually during the 5-year authorization process unless new scientific information becomes available that is significantly contrary to the science used by NMFS during this rulemaking. As noted in the regulations, NMFS will notify the public within 30 days of issuance of an LOA. That notification would provide notice if the Navy had requested a taking authorization for an area of concern to a State.

However, a state can petition NMFS for a modification whenever it has documentary evidence that the determinations made by NMFS are no longer valid. NMFS notes that procedures are established under the CZMA to address this issue. NMFS recommends that those coastal states with Federally-approved CZMA programs that have concerns over SURTASS LFA sonar, follow the procedures outlined in the regulations (15 CFR part 930). NMFS notes that for states along the U.S. Eastern Seaboard, the OBIA1 restriction for SURTASS LFA sonar operations inside the 200-m (656.2-ft) isobath limits sound levels inside state waters to levels significantly less than other sources for which states have not imposed restrictions on noise under their CZMA authority as required under 15 CFR part 930. However, the regulations note that a state is required to apply its policies uniformly and consistently and not apply policies differently (e.g., holding a Federal agency to a higher standard than a local government or private citizen) and NMFS will give careful consideration to the CZMA regulations whenever it is in receipt of a petition under this subpart.

Comment MMPAC48: Only a 45-day period was provided for the public to comment on the proposed rule and Final EIS. An extension is required to June 17, 2001.

Response: The comment period for the proposed rule was extended from the original date of May 3, 2001 to May 31, 2001; a total period of 73 days. The Navy's Final EIS has been available to the public since January 2001.

Comment MMPAC49: The LOA and regulations are inadequate to protect the North Atlantic right whale per NMFS' mandate. Right whale ship strike data alone suggest that the LFA vessel could transmit while sailing right over a right whale. They simply do not react to ships and other danger. As the potential for biological removal for this stock under the MMPA is zero, the take by LFA transmissions of even one individual could constitute jeopardy under the ESA. What are the take levels for the North Atlantic right whale?

Response: NMFS has completed consultation under section 7 of the ESA. The finding of that consultation was that operation of the SURTASS LFA sonar is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. A copy of the Biological Opinion issued as a result of that consultation is available upon request (see **ADDRESSES**). NMFS believes that through establishment of OBIA1, and implementation of the tripartite monitoring and mitigation program, it is very unlikely that North Atlantic right whales will be affected by SURTASS LFA sonar. Figure 2 illustrates the extent of protection offered by OBIA1 in relation to right whale critical habitat. The potential for even a single right whale to be seriously injured is, therefore, exceedingly remote. Considering the number of other activities, such as commercial shipping and oil and gas exploration (off the east coast of Canada), SURTASS LFA sonar operating off the East Coast of the United States would add an insignificant amount of noise to the already high levels of noise along the coast, if it were to operate in the Northwest Atlantic.

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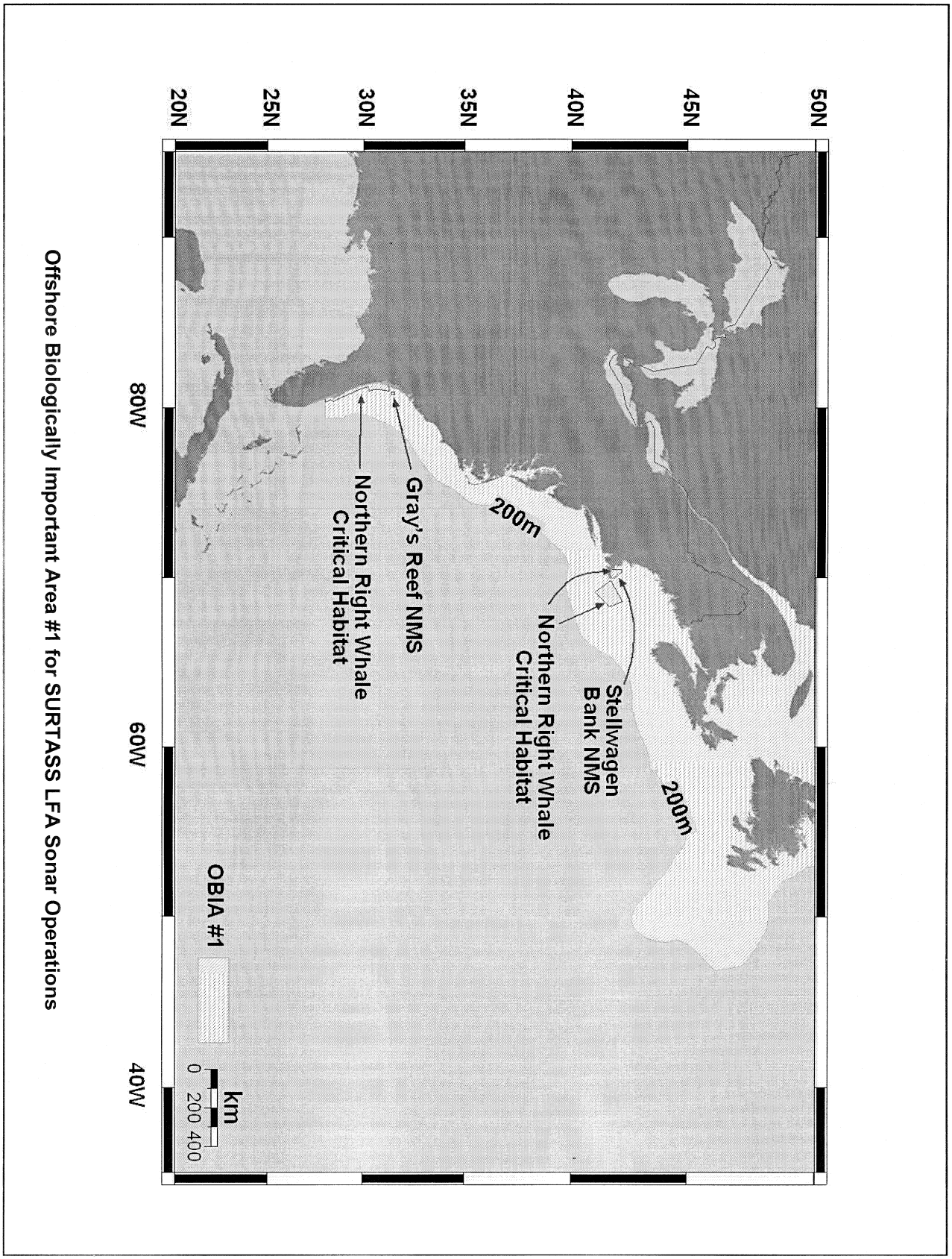

Offshore Biologically Important Area #1 for SURTASS LFA Sonar Operations

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The potential for a ship strike by the SURTASS LFA vessel is minimal because it will not operate in right whale critical habitats and migration

corridors and its maximum speed is 3 knots. This is well below the maximum allowable speed of 7 knots for whale watch vessels when within one-half mile of a large whale. When not operating SURTASS LFA sonar, the ship will follow standard procedures for avoiding collisions with whales.

Comment MMPAC50: Section 216.191 appears to provide for additional protection through the addition of areas that would be subject to protection under § 216.183(d), but does not expressly provide for ''additional protection'' (e.g., received levels less than 180 db). Section 216.191 should also provide a process for additional protection within areas designated under 216.183(e).

Response: Paragraph 216.191 (in 50 CFR) provides a process for nominating areas as OBIAs, not for adding additional mitigation measures either inside or outside existing or nominated OBIAs. To add additional mitigation measures either inside or outside an OBIA, applicants would need to petition NMFS under the APA as described elsewhere in this document. However, NMFS has amended § 216.183(d) to make it more clear that operating SURTASS LFA sonar with sound levels in excess of 180 dB inside a designated OBIA is prohibited.

Comment MMPAC51: The deferral of action to identify additional OBIAs for up to 8 to 12 months as part of this rulemaking inappropriately increases the possibility that NMFS will authorize SURTASS LFA sonar operations in biologically important areas thus making a finding of negligible impact questionable. The addition of new areas appears to be contingent on NMFS and Navy approval. What will the status of candidate OBIAs be during this period? Will LFA operations be halted?

Response: Please see RTC MMPAC41, especially in regard to making a negligible impact determination. As noted there and in the proposed rulemaking, NMFS is following established rulemaking procedures for designating OBIAs under this action. The establishment of new OBIAs is contingent upon notice-and-comment rulemaking and will not be effective until an amendment to 50 CFR 216.183(e). NMFS will make a preliminary and final determination of establishment of new OBIAs on the best science available. Any interested party or organization, including the Navy, will have the opportunity to comment on any OBIA petition. One criterion to consider will be any national security concerns.

Comment MMPAC52: NMFS's proposed procedure for designation of additional OBIAs places the burden of proof on the public to show that offshore areas are important for marine mammals breeding, feeding, or migration. This appears to be contrary to the section 101(a)(5)(B) of the MMPA. Sonar operations should be suspended or prohibited in any area where marine mammals occur in above average densities until it is determined that such operations will not have more than a negligible impact on those species or stocks.

Response: NMFS has made a negligible impact determination for the Navy's operation of SURTASS LFA sonar for routine training and testing as well as the use of the system during military operations. OBIAs, on the other hand, are established in order to reduce the potential for taking marine mammals to the lowest level practicable as required by § 101(a)(5)(A)(ii)(I). SURTASS LFA sonar operations will be suspended whenever a marine mammal enters the 180 dB safety zone or is detected within 1 km (0.54 nm) of the 180-dB safety zone, independent of the density of marine mammals in that area. It should be recognized that suspension of sonar transmissions due to marine mammal presence interferes with training or other military operations; therefore, it is unlikely that the Navy would intentionally operate in areas of high marine mammal abundance or remain within such an area if it expected significant shutdowns.

Comment MMPAC53: NMFS should describe the procedures to be followed if data become available suggesting that continued operations in an area is having, or may have, more than a negligible impact on marine mammal species or stocks.

Response: The procedure is described in 50 CFR 216.106. If, as a result of information obtained through the LTM requirements, new scientific research under the LTM program, or from other credible sources that becomes available, NMFS determines that the taking either in a single province, several provinces, or in a biome is having more than a negligible impact on affected species or stocks, 50 CFR 216.106(e) requires that LOAs will be withdrawn or suspended, after notice and opportunity for public comment. The requirement for notice and opportunity for public review shall not apply if NMFS determines that an emergency exists that poses a significant risk to the well being of the species or stocks of marine mammals concerned.

LOA Concerns

Comment MMPAC53: Who will be the holder of an LOA?

Response: The holder for the LOA for the SURTASS LFA sonar systems will be the Chief of Naval Operations, or his duly appointed representative.

Comment MMPAC54: One organization states that the proposed LOA is for incidental taking by harassment and non-serious injury only, which is Level B Harassment. They believe that, because NMFS has stated that some Level A harassment still needs to be considered possible, the Navy would need a Level A harassment permit as well.

Response: Separate authorizations are not required under the rulemaking. The Navy has applied for an authorization to take marine mammals by harassment (as that term is defined in the MMPA), which means that marine mammals may be injured (Level A Harassment), but not killed, or they may experience disruptions in behavioral patterns (Level B Harassment). The MMPA does not distinguish between serious and non-serious injury. However, for reasons stated elsewhere in this document, NMFS believes that the potential for any marine mammals to be injured is negligible.

Public Hearing Concerns

Comment MMPAC55: Commenters expressed concern that Navy proponents were at the same table with the NMFS hearing officer at the proposed rule's public hearing.

Response: The NMFS hearing officer at the public hearing explained that responses to public comments and questions would be provided during the hearing if time allowed. Since most questions were expected to be in regard to the SURTASS LFA sonar system and the scientific research program, NMFS believed it would facilitate the hearing process to have the Navy available at the table microphone for reply. No intent should be presumed other than one to facilitate the hearing procedure.

Comment MMPAC56: Commenters questioned why the hearing panel consisted of only one person and why others, who would be expected to be in the decision-making for the final rule, were not in attendance.

Response: NMFS did not state that it would convene a hearing panel, and planned only to have a hearing officer, mainly to ensure that as many people that wished to testify had the opportunity to do so. Since court reporters were contracted to obtain transcripts of the hearings, and because these transcripts are part of NMFS' Record of Decision on this matter, and may be reviewed by decision-makers, attendance by decision-makers at the hearing was not necessary.

Comment MMPAC57: Discuss the validity of the audio demonstration at the public hearing. NMFS tried to stop this acoustic demo at the public hearing.

Response: To allow as many people as possible to speak in the allotted hearing time, NMFS limited the time each individual or group had to present their comments. There were no cases during the public hearings in Los Angeles, Honolulu, or Silver Spring where speakers were not allowed to speak or were deterred by NMFS personnel for other reasons. One individual was questioned prior to the Los Angeles hearing when, without introducing himself to the NMFS Hearing Officer, he began to set up speakers and amplification devices. After questioning, and once it was determined that the Federal Government would not be liable for any illnesses resulting from the broadcasts, (illness had been alleged at previous hearings when transmissions were broadcast by the Navy), NMFS allowed the individual to broadcast his demonstration, which was composed of two LF oscillators, one at 250 Hz and the other at 250 to 270 Hz, creating a beat frequency oscillation.

According to the Navy, it is difficult to evaluate the validity of the audio demonstrations presented at the Los Angeles and Silver Spring, MD hearings without specific technical information, which was not provided. It should be noted, however, that these demonstrations were conducted by different people using the same or similar equipment. Both demonstrations reportedly broadcast sound levels in air of 85 dB and 100 dB (re 20 μPa @ 1 m) (actual measurements were not made at the demonstration) which were claimed to be equivalent to the underwater SPL of the SURTASS LFA sonar source at about 10 to 40 mi (16 to 64.4 km). However, according to witnesses to both demonstrations, the levels at the Los Angeles hearing were markedly louder. The validity of the demonstrations is, therefore, unknown.

Other MMPA Concerns

Comment MMPAC 58: Causing short-term behavioral responses in whales is a violation of the MMPA when applied to whale-watching, as determined by NMFS guidelines, and in the case of Hawaii, regulations.

Response: NMFS clarifies that the whale watching industry is not authorized to ''take'' marine mammals, either intentionally or incidentally, therefore, harassment takings are illegal.

Comment MMPAC59: There are international implications of SURTASS LFA sonar outside the U.S. EEZ and non-U.S. parties were not given an opportunity to comment. Also, an international panel comprised of political, scientific, and military experts from all countries with maritime interests regarding this type of technology should be convened by NMFS prior to issuing an LOA.

Response: NMFS received comments from citizens around the world, during the 75-day rulemaking comment period. However, there is no requirement in U.S. law that requires Federal Government agencies to solicit comments internationally prior to making determinations that affect U.S. actions, especially U.S. military activities. NMFS presumes that if there is sufficient interest in anthropogenic noise sources in the marine environment, appropriate international bodies will convene such a panel.

Comment MMPAC60: A Federal agency notes that the proposed rule on page 15376, column 1, paragraph 1 (66 FR 15375, March 19, 2001) indicates that the Navy has applied for an incidental take authorization to operate the SURTASS LFA sonar for a period of time not to exceed 5 years. Presumably, the Navy plans to use the sonar for an indefinite period of time and the 5-year period is the maximum authorization period under the MMPA. This should be made clear. Also, possible cumulative effects beyond the requested 5-year authorization should be considered in the development of monitoring and reporting requirements for any authorization issue.

Response: In the Final EIS (RTC 4–10.7), the Navy states that the expected life span of each SURTASS LFA sonar is approximately 20 years. NMFS expects that the Navy will apply for consecutive 5-year authorizations as provided under the MMPA and implementing regulations. This will require the Navy to resubmit a new petition for regulations every 5 years. While NMFS can only legally require the Navy to perform monitoring and research during each of the 5-year authorization periods, as part of any reauthorization process, NMFS will review the required reports and research undertaken during the first 5-year authorization and apply this new information to subsequent rulemaking determinations.

ESA Concerns (ESAC)

Comment ESAC1: Did ESA section 7 consultation begin on August 1999 or May 1998? The Final EIS stated that consultation began in August 1999. NMFS letter of 27 January 1999 stated that the Navy requested consultation with the NMFS under Section 7 of the ESA in its letter of 18 May 1998.

Response: In its letter of 18 May 1998, the Navy requested assistance from NMFS pursuant to Section 7 of the ESA in providing compilations of listed, proposed, and candidate threatened and endangered species under the jurisdiction of the NMFS. This letter initiated informal consultation with the NMFS under section 7 of the ESA. This letter is included in Appendix A of the both the Draft EIS and Final EIS. Formal consultation commenced on October 4, 1999.

NEPA Concerns (NEPAC)

Comment NEPAC1: Under NEPA regulations the Navy should prepare a Supplemental EIS (SEIS) based on significant new information (letter from Natural Resources Defense Council dated May 31, 2001 and Earth Island Institute letter dated September 27, 2001). This information includes: (1) The potential for non-auditory physiological impacts on marine mammals induced by acoustic resonance of the LFA sonar signal in the bodies of the animals; (2) Dr. Tepley's document which addresses the issue of resonance effects in air spaces within the sinus and middle ear cavity of marine mammals; (3) correlation between naval maneuvers and other mass strandings and multi-species strandings of beaked whales; (4) the ability of present and future passive sonar technologies to meet the long-range detection requirements; and (5) the operation of LFA sonar with other active sonar systems by domestic and foreign navies including LFA sonar currently being developed by other nations.

Response: CEQ's regulations governing NEPA require Federal agencies to prepare an SEIS if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). NMFS has reviewed the above information and believes that this information does not constitute significant new information that would require the development of an SEIS in accordance with 40 CFR 1502.9(c)(1)(ii). The rationale for this determination is supported by information provided elsewhere in this document and summarized here.

(1 and 2): As discussed previously in several RTCs in this document, the potential impacts of non-auditory physiological impacts, such as tissue damage potentially caused by resonance, will occur at an SPL of 180 dB or higher (Cudahy and Ellison, 2002). Therefore, because the Draft and Final EISs used 180 dB as the criterion

for the determination for the potential for injury and for the implementation of geographic and monitoring mitigation measures, non-auditory physiological impacts were analyzed in these documents. Because SURTASS LFA sonar will use extensive mitigation measures (passive acoustic, visual observers, and a new HF/M3 sonar), injury is unlikely.

(3) As noted in RTCs MMIC24a and MMIC25, the data show that 5 of 49 beaked whale stranding events that occurred possibly were related to military maneuvers (Potter, 2001). Two of these were definitely not related to sonar activity: (a) April 3, 1974, four Cuvier's beaked whales at Bonaire, Lesser Antilles, in the area where a naval vessel was dumping ammunition which caused an underwater explosion; and (b) December 17–22, 1974, three Cuvier's beaked whales and one striped dolphin stranded in Corsica. The striped dolphin had bullet wounds. Simmonds and Lopez-Jurado (1991) state that between 1982 and 1989 there were 22 strandings of cetaceans in the Canary Islands, with three being related to military activity. Therefore, the data do not necessarily suggest a high correlation between naval activities and beaked whale strandings, nor do they provide evidence of causation. Strandings were discussed in the Final EIS on pages 3.2–45 to 3.2–47.

(4) As stated in the Final EIS at page 2–2, LFA ''is an augmentation to the passive (SURTASS) detection system, and is planned for use when passive performance is inadequate.'' In many instances passive sonar can provide the detection required. However, under certain conditions, such as areas of high ambient (background) noise (*e.g.,* high shipping density), passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, hard-to-find submarines during *all* conditions, particularly at long ranges. Additional discussion of passive sonar technologies can be found in the Final EIS (RTCs 1–2.1, 1–2.2, and 1–2.3 and RTC AC11).

(5) As stated in RTC SIC79 and MMPAC33 in this document, neither the Navy nor NMFS is aware of the use by other nations of SURTASS LFA sonar, or other systems that use a LF source (i.e., 1 kHz or below), except for the SACLANTCEN (NATO) TVDS system. While the U.S. Navy does not intend to operate SURTASS LFA sonar with this NATO system, an analysis of cumulative impacts was conducted in the Navy's Final EIS. Please see RTC SIC79 for more information. Since this is not a reasonably foreseeable future action, additional assessments of the potential impacts to the marine environment would, at best, be speculative at this time.

Comment NEPAC2: The Final EIS, with its official responses, is inadequate to defend the program as presented by NMFS. NMFS must not rely upon the Final EIS for any management standards or rulemaking for human noise in the oceans. By accepting the Final EIS, NMFS has accepted responsibility for all the Final EIS inadequacies.

Response: NMFS believes that the Final EIS document meets the requirements under NEPA and its implementing regulations (40 CFR parts 1500–1508). As a result, NMFS has determined that, in accordance with CEQ regulation at 40 CFR 1506.3(a), the Navy's NEPA statement meets the requirements of the CEQ regulations and has, therefore, adopted the Navy Final EIS as its own NEPA document for this action.

Comment NEPAC3: The EIS, especially the modeling, should be peer-reviewed.

Response: The EIS, and thus its analyses, have met or exceeded all of the review and comment periods required by law. NMFS notes that there is no requirement under NEPA for an EIS to be peer-reviewed. The Navy's Draft EIS was available for review and comment by all, including independent scientists, the comment period was sufficiently long to allow review by scientists, and a number of scientists provided comments to the Navy and/or NMFS. NMFS considers these public review periods to more than satisfy the commenter's concern that scientists provide input into the Navy's proposal, including the AIM. Moreover, as an alternative model has not been suggested, NMFS adopts the Navy's AIM as the best model available for its determination of negligible impact.

Comment NEPAC4: The Final EIS responses to comments demonstrate a range of denials, dismissals, deflections, misstatements, and inaccuracies, with occasionally an objective and factual response. Many comments/questions were ignored. The answers to comments were glib and perfunctory. Examples include Comment 4–4.13, 4–4.14.

Response: Because the commenters failed to identify the specific comments/questions that they claim have been ignored (except RTC 4–4.13 and 4–4.14), no response is possible. RTC 4–4.13 and 4–4.14 were based on scientific input from recognized marine biologists and underwater acousticians. NMFS recognizes that there is often disagreement about a response; however, this is different from being non-responsive. RTCs 4–4.13 and 4–4.14 are examples of this difference of opinion.

Comment NEPAC5: The comments of the MMC, pertaining to the Navy's SURTASS LFA sonar, and NMFS authority in the matter, are contained in a letter to Joseph Johnson (i.e., NEPA program manager for the SURTASS LFA sonar program) dated October 27, 1999. Their comments, though delivered in a low-key style, are damning in the extreme. See the list from Animal Welfare Institute letter of May 29, 2001 to NMFS, page 2, comments of the MMC pertaining to the Navy's SURTASS LFA Sonar Draft EIS.

Response: The MMC's comments on the Draft EIS were addressed by the Navy in the Final EIS Response to Comments. Some of those issues are repeated in this document. NMFS believes the MMC's concerns have been adequately addressed in either the Final EIS or this document.

Comment NEPAC6: Whereas the Final EIS was written by the contractor, eager to sell LFA, and the Navy, anxious to use it, the first responsibility of NMFS is the conservation of ocean resources, not military needs.

Response: CEQ regulations (40 CFR 1506.5(a)) state, ''Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate by the cooperating agency, specifying that they have no financial or other interest in the outcome of the project.'' This disclosure statement has been executed. The contractor assisted in the preparation of the EIS; however, Navy representatives made all decisions for the Navy. Marine Acoustics Incorporated, the contractor who provided support to the Navy for the SURTASS LFA sonar NEPA process is not affiliated with the manufacturer of the SURTASS LFA sonar.

Knowing that the Navy's SURTASS LFA sonar had the potential to take marine mammals incidental to its operation, and, that there was consideration being given at the time that an incidental, small take application would be submitted by the Navy, NMFS agreed to be a cooperating agency on the preparation of the EIS to meet its NEPA obligation required because of rulemaking under the MMPA, not the ''military needs'' of the Navy. See Comment 45 in the SURTASS LFA sonar proposed rule for a more detailed discussion.

Comment NEPAC7: The Navy has already cut contracts for 23 more LFAS vessels. By limiting the Final EIS to just four test ships while fully intending to use 27 ships or more of the same type, the Navy is guilty of ''segmentation.''

Response: According to the Navy, it has no plans, nor have any contracts been awarded, for the construction of 23 additional SURTASS LFA sonar vessels.

Comment NEPAC8: Why wasn't the NEPA process commenced in the late 1980s? Why weren't LOAs requested for these tests?

Response: Early LF acoustic research testing was not considered a major Federal action significantly affecting the quality of the human environment under NEPA and was not considered to involve the taking of marine mammals under the MMPA. As the program developed and the building blocks of the operational system were put in place, the project moved out of the classified phase and into a mostly unclassified phase, while it became increasingly apparent that SURTASS LFA operations could possibly affect the marine environment. As additional testing was conducted, appropriate analysis under NEPA was conducted and the potential for MMPA impacts assessed. On several occasions, under proper procedures for handling classified material, the Navy consulted with NMFS under section 7 of the ESA on these activities. Also, the Navy prepared Environmental Assessments for the LFS SRP in June, 1997 (Phase I), November, 1997 (Phase II), and February, 1998 (Phase III). Scientific research permits were issued under section 104 of the MMPA for the LFS SRP.

Comment NEPAC9: The EIS is inadequate for the following reasons:

Comment NEPAC9a: The EIS is less than objective because of the irreversible and irretrievable commitment of hundreds of millions of dollars.

Response: Irreversible and irretrievable commitment of funds is addressed in the Final EIS Chapter 9 and RTC 1–3.5. As stated in the Final EIS, money spent to date related to the SURTASS LFA sonar program falls into several different categories. SURTASS LFA sonar itself was the result of a lengthy research and development program that represented a substantial expenditure of funds. In addition, the Navy contracted for refit/construction of vessels that were capable of carrying the equipment for the passive (listening only) component (SURTASS) as well as the active component (LFA). Also, the LFS SRP was expensive, but it contributed significantly and directly to the EIS process. In any event, the monies expended on the SURTASS LFA sonar program do not bind the Navy to deploy the SURTASS LFA sonar as proposed.

Comment NEPAC9b: The Navy failed to investigate the use of the system during ''heightened threat conditions.''

Response: Use of the system during ''heightened threat conditions'' is addressed in the Final EIS (RTC 1–1.8 and 1–1.9) and in this document (see RTC AC2).

Comment NEPAC9c: A failure to consider alternatives to the LFA sonar that might achieve the same purpose with less impact to the environment, such as passive sonar.

Response: Alternatives to SURTASS LFA sonar, including passive sonar, are covered in the Final EIS Subchapters 1.1.3 and 1.2.2 and RTCs 1–2.1, 1–2.2, 1–2.3, and 2–3.3a.

Comment NEPAC9d: Large data gaps exist.

Response: Data gaps are discussed in detail in the Final EIS (RTCs 1–3.6, 2–3.4, 2–3.7, 2–4.2, 3–8.1, 3–8.3, and 4–4.1). In the Final EIS Subchapter 1.4.4, the Navy discusses scientific data gaps regarding the potential for effects of LF sound on marine life. In addition data gap concerns have been addressed in this document.

Comment NEPAC9e: The Final EIS relies on the limited LFS SRP.

Response: The Final EIS did not rely solely on the results of the LFS SRP. This is discussed in detail in Subchapter 1.4 of the Final EIS.

Comment NEPAC9f: The analysis did not consider the increasing stress levels in the oceans.

Response: In the Final EIS Subchapter 4.4 potential cumulative impacts are analyzed in the context of recent changes to ambient sound levels in the world's oceans.

Comment NEPAC9g: The integrity of the Navy's independent researchers is questioned because the Navy funded their time to do the research. There is a conflict of interest because the Navy funded the research.

Response: Recognized experts in the fields of marine biology and bioacoustics independently planned and executed a series of Navy-sponsored scientific field research projects to address the most critical data gaps on the effects of LF sound on the behavioral responses of free-ranging marine mammals. NMFS believes the integrity of the LFS SRP independent researchers is sound.

CEQ regulation 40 CFR 1502.22(a) states that if there is incomplete information relevant to the impact analysis and the choice among alternatives and the cost to obtain it is not exorbitant, the agency (in this case the Navy) shall include this information in the EIS. Because of the concerns of the scientific community and environmental groups, the Navy conducted the LFS SRP and diver's studies despite the cost of over $10M. Finally, the funding of the research by the Navy is authorized by federal regulations.

Comment NEPAC10: A conflict of interest exists because two employees of NMFS were involved in the preparation and review of the EIS.

Response: See Final EIS RTC 14–1.1 and Comment 45 of NMFS' proposed rule document.

CZMA Concerns

Comment CZMA1: Why has NMFS failed to consider the Navy's lack of compliance with the CZMA as an issue in preparing the rule?

Response: Under the CZMA Federal Consistency Regulations, Federal agencies shall review their proposed activities to determine: (1) That there will be no coastal effects, or (2) that Federal activities which affect any coastal use or resources are undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of state's approved management programs. At the Draft EIS stage, which is the document NMFS had for use when drafting the proposed rule, the Navy submitted that document to 23 states and 5 territories that could potentially be affected by SURTASS LFA sonar operations and had approved CZMA programs. Since that time, the Navy has completed the consistency process for all coastal states that could be potentially affected by LFA (22 states) and territories, with the exception of California. The Navy will apply to California prior to planned exercises in their waters. On August 7, 2001, the Maine Coastal Program requested supplemental coordination based on potential effects of the SURTASS LFA sonar operations on the northern right whale and other resources of Maine's coastal zone prior to the Navy's deployment of the system in the Gulf of Maine. The Navy replied on October 2, 2001 stating that SURTASS LFA sonar would not be operated in the Gulf of Maine or in any critical habitats of the northern right whale. The system would not be operated within the 200-meter (656.2-ft) isobath as per the geographic restrictions of OBIA#1 for the eastern seaboard. Therefore, the Navy determined that supplemental consultation is premature.

Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) Concerns

Comment MAC1: What is the effect of LFA on essential fish habitats (EFH)? A

commenter wants to know why the Navy did not follow the Draft EIS comments of NMFS Office of Protected Resources and Office of Habitat Conservation that the Navy initiate consultation under the Magnuson-Stevens Act, or explain in the Final EIS the basis for their conclusion that the proposed action would not adversely affect EFH.

Response: The Navy has determined that the proposed action would have no adverse effects on EFHs (Navy letter, Serial 01C/069 of February 28, 2000) (See the Final EIS, Appendix A (Correspondence)). The potential impacts of the proposed action on fish stocks are discussed in the Final EIS Subchapter 4.1.1 and RTC 4–1.2. The Navy responded to the subject comment by NMFS in the Final EIS (RTC 6–1.4).

Miscellaneous Concerns (MC)

Comment MC1: The link between funding and the LFA invites investigation. One immediate example is the recent adjustment of funds from NMFS in support of right whales. NMFS has recently changed funding priorities, removing support from the disentanglement program, population studies, and a related scarification project, while allocating a very large sum to at least one other scientist closely related to the LFA.

Response: NMFS does not know the identity of the scientist referred to in the comment. Without knowing more, NMFS cannot respond fully to this comment. NMFS funding has been used for a broad spectrum of contract work and internal work on right whales, including the New England Aquarium, Oregon State University, and Woods Hole (including economists). These are for research tasks, specifically for right whale research and recovery actions. Other scientists studying right whales have received funding from the North East Consortium. The Consortium funding is from an independent peer-review, not from NMFS.

Comment MC2: NMFS has made several preliminary determinations relating to the LFA based on impracticality, for example, specifically migration corridors. By definition, it will always be impractical to establish management rules or constraints on anthropogenic noise because all solutions will be impractical to someone. Also, one organization would like NMFS to better address protection measures to minimize potential impacts to humpback whales along their migratory corridors.

Response: What NMFS stated in the preamble to the proposed rule was that it would be impractical to structure regulations specifying migratory corridors. As indicated in this document, because the tripartite mitigation will be above 95-percent effective, it is unnecessary to prohibit Navy SURTASS LFA sonar operations from wide swaths of ocean simply because it is used by a whale stock that is widely dispersed in space and time within that corridor. There is little information available on open ocean whale migration; for example, the actual migration routes of North Pacific humpback whales are generally unknown. Recent research has shown that between Hawaii and Alaska humpback whales tend to follow a migratory corridor that is within 1 degree of magnetic north (Mate *et al.*, 1998). Furthermore, Norris *et al.* (1999) and Abileah *et al.* (1996) have determined ''loosely defined'' migration corridors are bounded by longitudes 150/155 degrees W. and 160 degrees W. and latitudes 30 degrees N. and 40 degrees N. Migrating humpback whales observed in the Atlantic are usually alone or in small pods of 4 to 5 individuals. Based on this information, it can be estimated that this humpback whale migration route is between approximately 300 to 600 nm (555.6 to 1111.2 km) wide in the Pacific Ocean. Therefore, the density of humpback whales would be expected to be low, and with the proposed mitigation these open ocean migration corridors will not be affected any differently than any other open ocean area.

Comment MC3: NOAA and the Woods Hole Oceanographic Institute (WHOI) have LFA technology on their research ships.

Response: NMFS does not know the commenter's meaning of ''LFA technology'' however, SURTASS LFA sonar is not onboard NOAA or WHOI vessels. These vessels do, however, have research capabilities using various types of sonar for sea bottom mapping, acoustical measurements of ocean parameters, and living marine resource assessments.

Affected Marine Mammal Species

In the Navy Draft and Final EIS analysis and its small take application, the Navy excluded from take consideration those marine mammal species that either do not inhabit the areas in which SURTASS LFA sonar would operate, do not possess sensory mechanisms that allow the mammal to perceive LF sounds, or are not physically affected by LF sounds. Where data were not available or were insufficient for one species, comparable data for a related species were used, if available. Because all species of baleen whales produce LF sounds, and anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing, all balaenopterid species are considered sensitive to LF sound and at risk from exposure to LF sounds. The eleven species of baleen whales that may be affected by SURTASS LFA sonar are blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), northern right (*Eubalaena glacialis*), southern right (*Eubalaena australis*), pygmy right (*Capera marginata*), bowhead (*Balaena mysticetus*), and gray (*Eschrichtius robustus*) whales.

The odontocetes (toothed whales) that may be affected because they inhabit the deeper, offshore waters where SURTASS LFA sonar might operate include both the pelagic (oceanic) whales and dolphins and those coastal species that also occur in deep water including harbor porpoise (*Phocoena phocoena*), beluga, *Stenella spp.*, Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), *Lagenorhynchus spp., Cephalorhynchus spp.,* bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp., Hyperoodon spp., Mesoplodon spp.*, Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

Potentially affected pinnipeds include hooded seals, harbor seals (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seals (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*), southern fur seals (*Arctocephalus spp.*), Steller sea lion (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

A description of affected marine mammal species, their biology, and the criteria used to determine those species that have the potential for taking by harassment are provided and explained in detail in the Navy application and Draft and Final EISs and, although not repeated here, are considered part of the record of decision on this matter. Additional information is available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html* Please refer to these documents for specific information on marine mammal species.

Impacts to Marine Mammals

To understand the effects of LF noise on marine mammals, one must understand the fundamentals of underwater sound and how the SURTASS LFA sonar operates in the marine environment. This description was provided earlier in this document and also by the Navy in Appendix B to the Draft and Final EISs.

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (*i.e.* lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

The analysis of potential impacts on marine mammals from SURTASS LFA sonar was developed by the Navy based on the results of a literature review, the Navy's LFS SRP, and a complex, comprehensive program of underwater acoustical modeling. To assess the potential impact on marine mammals by the SURTASS LFA sonar source operating at a given site, it was necessary for the Navy to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the total acoustic exposure for each animal in the modeled population, (4) converting the resultant cumulative exposures for a modeled population into an estimate of the risk from a significant disturbance of a biologically important behavior, and (5) converting these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a significant disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to RL and repeated exposure. The resultant risk continuum is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold. Taken together, the LFS SRP results, the acoustical modeling, and the risk assessment provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished using the Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the AIM. AIM was used to estimate marine mammal sound exposures and essentially integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density are described in detail in the Navy application and the Final EIS and are not discussed further in this document.

Using the AIM model, the Navy developed 31 acoustic modeling scenarios for the major ocean regions (which are described in the application and Final EIS). Locations were carefully selected by the Navy to represent the highest potential effects for each of the three major ocean acoustic regimes where SURTASS LFA sonar would be employed. These acoustic regimes were: (1) Deep-water convergence zone propagation, (2) near surface duct propagation, and (3) shallow water bottom interaction propagation. These scenarios represent the condition under which, on average, the greatest number of animals could be exposed to the greatest number of pings at the highest RLs and were considered the most severe conditions that could be expected from operation of the SURTASS LFA sonar system. Thus, if SURTASS LFA sonar operations were conducted in an area that was not acoustically modeled, the Navy believes the potential effects would most likely be less than those obtained from the most similar scenario in the analysis. The modeled scenarios were then used by the Navy to estimate the percentages of marine mammal stocks potentially affected.

Risk Analysis

To determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals, biological risk standards were defined by the Navy with associated measurement parameters. Based on the MMPA, the potential for biological risk was defined as the probability for injury or behavioral harassment of marine mammals. In this analysis, behavioral harassment is defined as a significant disturbance in a biologically important behavior. The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The measurement parameters for determining exposure were RLs in dB, the pulse repetition interval (time between pings), and the number of pings received.

The Navy interprets the results of the LFS SRP to justify use of unlimited exposure to 119 dB during a mission as the lowest value for risk. Below this level, the risk of a biologically significant response from marine mammals approaches zero. It is

important to note that risk varies with both level and number of exposures.

In the Final EIS and small take application, the Navy calculated the risks for take by injury based on the criterion of 180 dB, which, based on Schlundt *et al.* (2000), is a conservative value for the onset of a minor TTS in hearing. Schlundt *et al.*'s (2000) measurement with bottlenose dolphins and belugas at 1-second duration implies that the TTS threshold for a 100-second signal would be approximately 184 dB (Table 1–4, Final EIS). In addition, for the 400-Hz signal, Schlundt *et al.* (2000), found no TTS at 193 dB, the highest level of exposure. As a result, the Navy believes that the 180-dB SPL criterion can be considered conservative. With three levels of mitigation monitoring for detecting marine mammals (described elsewhere in this document), it is unlikely that any marine mammal would get that close before being detected and the SURTASS LFA sonar shut down. However, because the probability is not zero, the Navy has included this scenario in its authorization request.

Because the LFS SRP did not document any extended biologically significant response at maximum RLs up to 150 dB, the Navy determined that there was a 2.5-percent risk of an animal incurring a disruption of biologically important behavior at an SPL of 150 dB, a 50-percent risk at 165 dB, and a 95-percent risk at 180 dB. This analysis of risk is used by the Navy as an alternative to an all-or-nothing use of standard thresholds for the onset of either behavioral change or injury. The subsequent discussion of risk function emphasizes the advantages of using a smoothly varying model of biological risk in relation to sound exposure. These results are analogous to dose-response curves used in toxicology that are accepted as the best practice in disciplines ranging from epidemiology, toxicology, and pharmacology.

An ''injury continuum'' is not necessary because of the very low numbers of individual marine mammals that could potentially experience high received sound levels, and the high level of effectiveness of the monitoring and shutdown protocols. For this action, all marine mammals exposed to an SPL of 180 dB or above are considered to be injured, even though, as demonstrated in this document, a mammal would need to receive an SPL significantly higher than 180 dB in order to be injured.

When SURTASS LFA sonar transmits, there is a boundary which will enclose a volume of water in which received levels equal or exceed 180 dB, and a volume of water outside this boundary which experiences received levels below 180 dB. In this analysis, the 180-dB SPL boundary is emphasized because it represents a single-ping RL that can be considered to be a scientifically conservative estimate for the potential onset of injury. Therefore, the level of risk for marine mammals depends on their location in relation to SURTASS LFA sonar. As mentioned previously, the Navy scientific team established the threshold for risk of the onset of potential injury as a single ping at 180 dB (Navy, 1999b). Under the Navy proposal, a marine mammal would have to receive one ping greater than or equal to 180 dB to potentially incur an injury.

However, NMFS scientists and other scientists are in general agreement that TTS is not an injury (*i.e.,* does not result in tissue damage) but is an impairment to hearing (*i.e.,* results in an increased elevation (*i.e.,* decreased sensitivity) in hearing) that may last for a few minutes to a few days, depending upon the level and duration of exposure. In addition, there is no evidence that TTS would occur in marine mammals at an SPL of 180 dB. In fact, Schlundt *et al.* (2000) indicates that onset TTS for at least some species occurs at significantly higher SPLs. Therefore, in this document, NMFS makes clear that, although TTS is not an injury (*i.e.,* Level A harassment), because PTS is considered an injury (Level A harassment), and because scientists have noted that the onset of PTS for marine mammals may be 15–20 dB of TTS (*i.e.,* the difference between the SELs that cause the slightest TTS and the onset of PTS), TTS is considered by NMFS to be in the upper portion of the Level B harassment zone (near the lower end of the Level A harassment zone). Therefore, onset PTS, not onset TTS, is considered by NMFS to be the lower end of Level A harassment. NMFS believes that establishing TTS at the upper end of the Level B harassment zone is both precautionary and warranted by the science. However, establishing mitigation measures, such as safety zones, as is done here, should be applied whenever a marine mammal has the potential to incur a TTS in hearing in order to prevent an animal incurring a PTS injury.

While the Navy believes that the probability of a marine mammal occurring within the 180–dB sound field at the onset of a transmission is nearly zero because of the tripartite monitoring mitigation program (described later in this document), because the monitoring may not be 100 percent effective at all times and situations, some Level A harassment takings still need to be considered possible.

Before the biological risk standards could be applied to realistic SURTASS LFA sonar operational scenarios, two factors had to be considered by the Navy: (1) How does risk vary with repeated sound exposure? and (2) how does risk vary with RL? The Navy addressed these questions by developing a function that translates the history of repeated exposures (as calculated in the AIM) into an equivalent RL for a single exposure with a comparable risk. This dual-question method is similar to those adopted by previous studies of risk to human hearing (Richardson *et al.,* 1995; Crocker, 1997).

Effects of Repeated Exposure

It is intuitive to assume that effects would be greater for repeated exposures than for a single ping. However, because no published data on repeated exposures of LF sound on marine mammals exist, the Navy turned to the most applicable human data. Based on the analysis of Richardson *et al.* (1995) and Kryter (1985), the potential for effects of repeated exposure on marine mammals was modeled on the extensive data available for human subjects. Based on discussion in Richardson *et al.* (1995) and consistent with Crocker (1997) and for reasons explained in RTC SIC76, the Navy determined that the best scientific information available is based on human models and, therefore, the formula $L + 5 \log_{10} (N)$ (where L = ping level in dB and N is the number of pings) defines the single ping equivalent (SPE). This formula then is considered appropriate for assessing the risk to a marine mammal from a significant disturbance of a biologically important behavior from LF sound like SURTASS LFA sonar transmissions.

Since the release of the Final EIS, an investigation by Cudahy and Ellison (2002) noted that the expected threshold for *in vivo* tissue damage (including lung damage and hemorrhaging) for LF sound can be on the order of 180 to 190 dB. Vestibular effects could affect balance and equilibrium, but may not result in injury. However, these effects are based on humans. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. It should be kept in mind that guinea pigs are not aquatic species and, as such, are not as robust to pressure changes as marine mammals. Finally, as stated in Crum and Mao (1996) and as discussed in the Final EIS (page 10–

137), researchers hypothesized that the received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood. However, ''non-auditory traumas'' are not expected to occur from sound exposure below SPLs of 180 dB. In light of the high detection rate of the HF/M3 sonar ensuring required SURTASS LFA sonar shutdown when any marine mammal approaches or enters the 180–dB LFA mitigation zone, the risks of these traumas to a marine mammal approach zero.

Estimation of Potential Effects to Marine Mammal Stocks

The potential effects on marine mammals from operation of SURTASS LFA sonar will not be the direct removal of animals. Based on AIM modeling results, the primary effects are from the potential for a significant change in biologically important behavior.

To estimate the percentage of marine mammal stocks affected on a yearly basis, the typical annual operating schedule for SURTASS LFA sonar was correlated to the modeled site scenarios. Even though the Navy will not have more than 2 SURTASS LFA systems operating during the next 5 years, its NEPA analysis incorporated four systems with six missions each annually. With two vessels in the Pacific/Indian Ocean area and two vessels in the Atlantic/Mediterranean area, the Navy estimates there could be up to 12 operations in each of these oceanic basin areas. Using a total of 12 operations in each large geographic area (*e.g.,* Eastern North Pacific, Western North Atlantic), the Navy calculated take estimates based on a 20-day exercise (actually under the normal schedule mentioned previously in this document the Navy proposes two 9-day exercises or a total of 18 days, not 20 days of exercise). NMFS concurs with this approach but notes that because only 2 SURTASS LFA sonar vessels will be available through 2007, the Navy's projected incidental harassment levels found in the Final EIS and application are overestimates of potential harassment levels during these regulations. NMFS estimates, therefore, that there would be a total of only 6 active SURTASS LFA sonar missions annually per vessel (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/year)) during the period of effectiveness of these regulations.

AIM Modeling in Table 4–10 in the application (Table 4.2–10 in the Final EIS) provides estimates of the percentage of stocks potentially affected for single SURTASS LFA sonar operations. Tables 4–12 and 4–13 in the application (Tables 4.2–12 and 4.2–13 in the Final EIS) provide an example of annual total estimates of percentages of marine mammal stocks potentially affected by a total of 24 operations (12 in each of the two ocean basins). As mentioned previously however, this number of operations are unlikely during the effectiveness period of these regulations. It should also be recognized that the scenarios chosen by the Navy are not the only possible combinations of areas where the SURTASS LFA sonar will operate. The potential effects from other scenarios can be estimated by presupposing the areas in which the Navy would conduct SURTASS LFA sonar operations annually in each oceanic basin area, determining from Table 4–10 in the Navy application the percentage of each stock that may potentially be affected, and adding those percentages together for each affected stock. Using updated modeling where appropriate, this is what the Navy will do annually for each LOA requested.

Also, the Navy will rerun AIM when planning missions for new or different areas and, if necessary, modify annual LOA authorization requests with an analysis of take estimates prior to any mission in a new/different area. For this document however, NMFS is adopting the Navy estimates shown in Final EIS Tables 4–12 and 4–13 as the best scientific information currently available. Thus, even though there will be a total of only two systems deployed under this rulemaking, by using these two tables, or by choosing a different combination of potential geographic areas for SURTASS LFA sonar operations derived from Final EIS Table 4–10, any potential scenario of operations can be addressed using the two systems (i.e., each in different oceanic areas, both in same oceanic area, etc.).

As stated previously however, given that it is more likely that SURTASS LFA sonar missions will occur in the open ocean rather than the modeled sites, and that the Navy will rerun AIM when planning missions for new or different areas to avoid certain areas during biologically sensitive seasons, NMFS believes that the estimates of taking by harassment incidental to SURTASS LFA sonar provided in the Final EIS are significantly higher than the more realistic 1 to 2 percent (or less) of affected stocks during a single 30-day mission. Short-term incidental harassment levels between 1 and 12 percent and below are considered by NMFS to comply with the MMPA as Level B harassment at this level is unlikely to result in significant effects on any species' or stock's reproduction or survival. Therefore, in order for incidental takings by SURTASS LFA sonar under this regulation to be negligible, takings by SURTASS LFA sonar operations during the effective time period (1 year) of any LOA issued for such Navy operations must not exceed 12 percent of any marine mammal stock (2 percent × six 30-day missions = 12 percent). However, this 12 percent level should not be interpreted to mean that the Navy will take up to 12 percent of all affected marine mammal stocks. In most cases, with carefully planned SURTASS LFA sonar missions (*e.g.,* to avoid certain biogeographic provinces during seasons of increased marine mammal abundance), the total annual Level B takes are expected to be significantly less than this level. Therefore, NMFS believes that the potential effect by SURTASS LFA sonar operations will be limited to only small numbers of the affected stocks of marine mammals that will have no more than a negligible impact on affected species and stocks of marine mammals. Moreover, the potential effect will be limited to incidental harassment that will not adversely affect the stock through annual rates of recruitment or survival.

Mitigation for Marine Mammals

This document adopts, with modification, the Navy proposal to use visual, passive acoustic, and active acoustic monitoring of the area surrounding the SURTASS LFA sonar array to prevent the incidental injury of marine mammals that might enter the 180-dB SURTASS LFA mitigation zone. The three monitoring systems are described in the following section of this document. If a marine mammal (or ESA-listed sea turtle) is detected within the 180-dB SURTASS LFA sonar mitigation zone, SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions may commence/resume 15 minutes after the marine mammal/sea turtle has left the area of the 180-dB sound field or there is no further detection of the animal within the 180-dB sound field. The protocol established by the Navy for implementing this temporary shut-down is described in the application (pages 10–11). However, NMFS has concluded that the 180-dB safety zone needs to be augmented to ensure to the greatest extent practicable that marine mammals are not subject to potential injury. In that regard, as an added safety measure, NMFS has established an interim ''buffer zone'' extending an additional 1 km (0.54 nm) beyond the 180-dB LFA

mitigation zone. Therefore, as soon as a marine mammal (or ESA-listed sea turtle) is detected by the HF/M3 sonar, the SURTASS LFA sonar will either be turned off or not turned on. This is a feasible mitigation measure since recent testing of the HF/M3 sonar indicates effective levels of detection up to 2 km (1.1 nm). At 2 km (1.1 nm), the SPL from the SURTASS LFA sonar will be approximately 173 dB. SURTASS LFA sonar operators would be required to estimate SPLs prior to and during each operation to provide the information necessary to modify the operation, including delay or suspension of transmissions, in order not to exceed the mitigation sound field criteria.

NMFS recognizes that there are areas of insufficient knowledge that must be accounted for when estimating the potential effects on marine mammals (e.g., the impacts of resonance on marine mammals, where research is already underway). NMFS also believes the present level of understanding is adequate to place reasonable bounds on potential impacts and provide a logical basis for the decision that safe and proper employment of SURTASS LFA sonar can be managed.

The Navy proposed that the SURTASS LFA sonar operations would be conducted to ensure that the sound field does not exceed 180 dB (i.e., the zone of potential for injury to marine mammals) at a distance of 12 nm (22 km) from any coastline, including islands, nor in OBIAs that are outside the 12-nm (22-km) zone during the biologically important season(s) for that particular area. The 12-nm (22-km) restriction includes almost all marine-related critical habitats and National Marine Sanctuaries (NMSs). However, some parts of NMSs, that are recognized to be important for marine mammals, are outside 12 nm (22 km). For purposes of this rulemaking, and because of their importance for marine mammals, NOAA's Office of National Marine Sanctuaries (ONMS) has recommended the following protective measures for operating SURTASS LFA sonar: (1) For the Monterey Bay NMS, received levels should not exceed 180 dB throughout the NMS; (2) in the Gulf of the Farallones and Cordell Bank NMSs, received levels should not exceed 180 dB, including those areas of the NMSs that extend beyond 12 nm (22 km); (3) for the Olympic Coast NMS, received levels in the NMS should not exceed 180 dB in the area from shore to 23 nm (37.4 km) in the months of December, January, March, and May of each year; and (4) for the Hawaiian Islands Humpback Whale NMS (HIHWNMS), received levels should not exceed 180 dB from December through May of each year. However, some of these NMSs, and others not listed here, will have additional mitigation for marine mammals because they are also human dive sites. As such, SPLs will not exceed more than 145 dB in those areas. Other than HIHWNMS, which is fully protected because of the addition of Penguin Bank as an OBIA under this action, the remaining three areas are limited to receiving an SPL no greater than 180 dB in order to protect marine mammals in those areas.

In addition to establishing a safety zone at 180 dB to protect marine mammals and other noise sensitive marine animals, the Navy will establish a safety zone for human divers at 145 dB re 1 μPa(rms) around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, it will also reduce the LF sound levels received by marine mammals that are located in the vicinity of known dive sites.

The Navy has proposed establishing OBIAs for marine mammal protection in its Draft and Final EISs. These areas are defined as those areas of the world's oceans where marine mammals congregate in high densities to carry out biologically important activities such as feeding, migration, breeding, and calving. The U.S. Navy has proposed three sites as OBIAs for SURTASS LFA sonar under these regulations. These areas are: (1) The North American East Coast between 28° N. and 50° N. from west of 40° W. to the 200-m (656-ft) isobath year-round; (2) the Antarctic Convergence Zone, from 30° E. to 80° E to 45° S., from 80° E. to 150° E. to 55° S., from 150° E. to 50° W. to 60° S., from 50° W to 30° E. to 55° S. from October through March; and (3) the Costa Rica Dome, centered at 9° N. and 88° W., year-round. Also, an area included in this document, at the request of NOAA's National Ocean Service, is Penguin Bank off the Island of Kauai, Hawaii, inside the HIHWNMS. In addition, NMFS has established a system for expanding the list of OBIAs. The establishment of OBIAs is not intended to apply to other Navy activities and sonar operations, but has been established in this rule as a mitigation measure to reduce incidental takings by SURTASS LFA sonar.

Monitoring

In order to minimize risks to potentially affected marine mammals that may be present in waters surrounding SURTASS LFA sonar, the Navy will: (1) Conduct visual monitoring from the ship's bridge during daylight hours, (2) use passive SURTASS LFA sonar to listen for vocalizing marine mammals; and (3) use high frequency active sonar (i.e., similar to a commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and establishment of shut-down criteria, the Navy will ensure, to the greatest extent practicable, that no marine mammals approach the SURTASS LFA sonar source closely enough to be subjected to potentially harmful sound levels (inside the 180-dB sound field; approximately 1 km (0.54 nm) from the source). The Navy estimates that the probability of detecting a marine mammal approaching the 180-dB sound field of the source array by at least one of these monitoring methods is above 95 percent. However, an effectiveness of 66 percent has been used in the Final EIS take calculations. The Navy's assumption incorporates the 50-percent effectiveness of the HF/M3 sonar (although testing the HF/M3 sonar indicates that it is over 95 percent effective), and an additional conservative 9-percent contribution for visual and 25 percent for passive monitoring. In general, the Navy believes that small, solitary marine mammals would be the most difficult to detect, while large whales and dolphin schools would be much easier to detect.

NMFS has reviewed this Navy proposal and believes that the proposal can be modified to provide additional protection for marine mammals. Because the HF/M3 has the capability to detect marine mammals, and track them, to a distance of 2 km (1.1 nm) from the source, NMFS is requiring the Navy to delay or suspend transmissions whenever a marine mammal is detected by the HF/M3 within the SURTASS LFA safety zone and the 1-km (0.54 nm) buffer zone. Also, NMFS is requiring the Navy to delay transmissions whenever a marine mammal has the potential to receive a calculated SPL of 180 dB within the zone of detectability. This will require, however, both that the marine mammal remains within the zone of detectability between ''pings'' while the vessel is underway, and that the Navy continue to monitor the SURTASS LFA sonar mitigation and buffer zones between successive pings. Because the time between SURTASS LFA sonar ''pings'' is 6–15 minutes, and the Navy has already committed to visual and acoustic monitoring for no less than 30 minutes prior to a ''ping,'' monitoring will continue during the

interim period and tracking of marine mammals will continue.

Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data will be collected and recorded. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs.

The LTM Program reporting requirements are two-fold. First, a mission report will be provided to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. This is the standard period of time provided for all small take authorizations. Second, the Navy will submit an annual report no later than 90 days prior to expiration of an LOA. These reports are summarized here.

Quarterly Report—On a quarterly basis, the Navy will provide NMFS with a report that includes all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. Specifically, these data will include dates/times of exercises, dates/times of LFA transmissions, locations of vessel, LOA area(s), marine mammal observations (see below for specifics), and records of all delays or suspensions of operations. Marine mammal observations will include animal type and/or species, number of animals sighted, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), bearing from vessel, range from vessel, abnormal behavior (if any), and remarks/narrative (as necessary). Because this period of time is insufficient to allow the Navy to declassify information that might compromise national security, quarterly reports will be classified and the information will not be publically available until the annual report. The Navy will declassify the quarterly information based on national security concerns and provide it in its annual, unclassified report. In the interim, NMFS will use these quarterly reports to monitor the SURTASS LFA sonar activity to ensure compliance with the terms and conditions of the LOA and regulations.

Annual Report—The annual report will provide NMFS with an unclassified summary of the year's quarterly reports and will include the Navy's assessment of whether any taking occurred within the SURTASS LFA mitigation and buffer zones and estimates of the percentage of marine mammal stocks affected by SURTASS LFA sonar operations, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics.

The annual report will also include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar operations; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar operations.

A notice of availability of the annual report(s) will be published in the **Federal Register** within 30 days of receipt of the annual report.

Comprehensive Report

The Navy is required by these regulations to provide NMFS and the public with a final comprehensive report analyzing the impacts of SURTASS LFA sonar on marine mammal stocks. This report will include an in-depth analysis of all monitoring and research conducted during the 5-year period of these regulations, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report will be a key document for NMFS' review and assessment of impacts for any renewal of these regulations.

Research

The Navy will, through a LTM program, provide annual assessments of the potential cumulative impact of SURTASS LFA sonar operations on marine mammals, fund research on impacts of LF sounds on marine mammals, conduct monitoring and reporting to increase knowledge of the species, and coordinate with others on additional research opportunities and activities. This would include cumulative impact analyses of the annually tabulated injuries (if any) and harassments over the next 5 years. The purpose of the LTM program will be to continue scientific data collection once SURTASS LFA sonar is deployed.

While NMFS believes that research conducted to date is sufficient to assess impacts on marine mammals, it believes that it would be prudent to continue research over the course of the period of effectiveness of these regulations. Accordingly, NMFS recommends that the Navy conduct the following research regarding SURTASS LFA sonar over the first 5-year authorization period:

1. Systematically observe SURTASS LFA sonar training exercises for injured or disabled marine animals. Past correlations between military operations and the stranding of beaked whales, including the Bahamas event, call for closer observation of all sonar operations.

2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).

3. Conduct research on the behavioral reactions of whales to sound levels that were not tested during the research phase, specifically between 155 dB and 180 dB. This should be done in a research format rather than in actual training operations.

4. Conduct research on the responses of sperm and beaked whales to LF-sonar signals. These species are believed to be less sensitive to LF-sonar sounds than the species studied prior to the LFS–SRP. However, enough questions exist that these species should be studied during the five-year permit period.

5. Conduct research on the habitat preferences of beaked whales, and plan future SURTASS LFA training exercises to avoid such areas. Avoidance is the most effective mitigation measure.

6. Conduct passive acoustic monitoring using bottom-mounted hydrophones before, during, and after SURTASS LFA sonar operations for the possible silencing of calls of large whales.

7. Continue research with the HF/M3 mitigation sonar. This is the primary means of mitigation, and its efficacy must continue to be demonstrated. ROC curves should be constructed if possible.

8. To determine potential long term, cumulative effects from SURTASS LFA sonar, select a stock of marine mammals that is expected to be regularly exposed to SURTASS LFA sonar and monitor it for population changes throughout the 5-year period. Alternatively, look for long-term trends in the vocalizations of marine mammals that are exposed to SURTASS LFA signals (see item number 6).

LOA Conditions

The regulations have been designed to allow many of the mitigation, monitoring and reporting requirements to be detailed in the LOA, rather than in these regulations. This will provide NMFS the ability to change these protective measures in a prompt manner to changing conditions. While public comment will be provided for substantial modifications to LOA requirements before they are made effective (see RTC MMPAC46), modifications can be implemented in a

shorter period of time if contained in LOAs than would be possible if rulemaking were required for each modification. The public would be provided a comparable length of time for commenting on proposed LOA modifications (except when NMFS determines that an emergency exists that impacts on the health and welfare of the marine mammal), whether or not those requirements were contained in regulations. However, for security reasons, locations and times for certain operations may need to be classified and would not be provided to the public in advance.

In the past, NMFS has promulgated regulations for small take authorizations that did not clearly describe LOA conditions. For this activity the following conditions will be in the LOA (in addition to, or in clarification of, those found in these regulations):

(1) Prior to each exercise, the distance from the SURTASS LFA sonar source to the 180-dB isopleth will be determined. That distance will be the established safety zone for that exercise; and

(2) Until research on the effects of resonance and tissue damage on marine mammals from underwater noise has been conducted, NMFS has included two interim operational restrictions to preclude the potential for injury to marine mammals by resonance effects: (a) Establishment of a 1-km (0.5-nm) HF/M3 buffer shutdown zone outside the 180-dB zone and (b) limiting the operating frequency of SURTASS LFA to 330 Hz and below.

These interim operational restrictions will be part of all LOAs issued under this rulemaking and a 30-day public comment period will occur before either one is removed. In order to lift the restriction, the Navy would need to provide empirical and/or documentary evidence that resonance and/or tissue damage from SURTASS LFA sonar transmissions is unlikely to occur in marine mammals at levels less than 190 dB.

Designation of Biologically Important Marine Mammal Areas

This final rule establishes a system for the public to petition NMFS to consider adding an area to the list of biologically important areas for marine mammals. NMFS emphasizes that, in order for designation, an area must be of particular importance for marine mammals as an area for primary feeding, breeding, or migration, and not simply an area occupied by marine mammals. The proposed area should also not be within a previously designated OBIA or other 180-dB exclusion area. In order for NMFS to begin the rulemaking process for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in § 216.191(a). If NMFS makes a preliminary determination that the area is biologically important for marine mammals, NMFS will propose rulemaking to add the recommended area to the list of previously designated areas. Through notice in the **Federal Register**, NMFS will invite information, suggestions, and comments on the proposal for a period of time not less than 45 days from the date of publication in the **Federal Register**. After review of the comments and information, NMFS will make a final decision on whether to add the recommended area to the list found in § 216.183(d). NMFS will either issue a final rulemaking on the proposal or provide notice in the **Federal Register** of its determination. Proposals for designation of areas will not affect the status of LOAs while the rulemaking is in process. NMFS anticipates that the time between nominating an area and publication of a final determination is likely to take 8–12 months.

Determinations

At present, only two SURTASS LFA sonar systems are available for deployment. According to the Navy, delivery of the third and fourth systems have been postponed until after FY 2007. As a result, under the 5-year window of these regulations, NMFS is authorizing marine mammal harassment takings for only 2 SURTASS LFA sonar systems. An authorization for additional SURTASS LFA sonar systems would require an amendment to these regulations.

With the normal scenario of one vessel operating in the Pacific-Indian Ocean area and one vessel in the Atlantic Ocean-Mediterranean Sea area, there could be up to 9 operations in each of these oceanic areas per year, normally six 30-day active missions using SURTASS LFA sonar (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/year), and three 30-day passive missions using only SURTASS sonar. The remaining 95 days would probably be spent in port. During a normal 30-day mission, it is estimated there would be two 9-day exercise periods, with up to 20 hours of sonar operations during an exercise day. Based on a 20-percent maximum duty cycle, the system would actually be transmitting for a maximum of 4 hours per day, resulting in 72 hours per 30-day mission and 432 hours per year of active transmission for each system. (There are 8,760 hours in a standard year).

Based on the scientific analyses detailed in the Navy application and further supported by information and data contained in the Navy's Final EIS for SURTASS LFA sonar operations and previously in this document, NMFS concurs with the Navy that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would result in the take of only small numbers of marine mammals, have no more than a negligible impact on the affected marine mammal stocks or habitats and not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. This determination is supported by the highly effective mitigation measures and interim operating restrictions implemented for all SURTASS LFA sonar operations and the LTM program, including the research to be conducted therein. This includes geographic operation restrictions, mitigation measures to minimize injury to any marine mammals, monitoring and reporting impacts to marine mammals and supplemental research that will result in increased knowledge of marine mammal species, and the potential impacts of LF sound on these species. In addition to ONR-funded marine mammal research (approximately $7M), the Navy intends to spend $1 million annually to fund the LTM program. These latter measures offer the means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing the incidental taking of marine mammals from anthropogenic underwater sound, and evaluating the possible long-term effects from exposing marine mammals to anthropogenic underwater sound.

In summary, the following factors support NMFS' determination that the takings by harassment as a result of the Navy's use of SURTASS LFA sonar would have no more than a negligible impact on any species or stock of marine mammal: (1) The findings of the scientific research program on LF sounds on marine mammals indicated no significant change in biologically important behavior from exposure to sound levels up to 155 dB; (2) the small number of SURTASS LFA sonar systems that would be operating world-wide; (3) the relatively low duty cycle, short mission periods and offshore nature of the SURTASS LFA sonar (where there is lower marine mammal abundance); (4) for convergence zone (CZ) propagation, the characteristics of the acoustic sound path, which deflect the sound below the water depth inhabited by marine

mammals for approximately 75 percent of the distance between the source and the first CZ and between the first CZ and the second CZ (approximately 45 km); (5) that the vessel must be underway while transmitting (in order to keep the receiver array deployed), limiting the duration of exposure for marine mammals to those few minutes when the SURTASS LFA sound energy is moving through that part of the water column inhabited by marine mammals; (6) for CZ propagation, the narrow width of the CZ ray path and up to a 1,000-fold decrease in the intensity of the sound immediately outside the ray path, further limiting exposure to marine mammals; and (7) implementation of the mitigation measures and interim operating restrictions that make it unlikely for a marine mammal to be undetected within the 180-dB sound field (and thereby potentially injured) during sonar transmissions. These measures all indicate that while marine mammals will potentially be affected by the SURTASS LFA sonar sounds, these impacts will be short-term and will not affect the survival or reproductive potential for marine mammals on a species or stock basis.

Substantial Changes to the Proposed Rule

The following modifications have been made to the proposed rule.

A paragraph has been added limiting these regulations to a maximum of two SURTASS LFA sonar systems.

The 16 geographic regions have been replaced with a new biogeographic system with 15 biomes and 54 provinces under the 15 biomes.

A paragraph has been added to note that if petitions for OBIAs are received without sufficient information for NMFS to justify proceeding with the petition, NMFS will determine whether the nominated area warrants further study. If it does, NMFS will begin a scientific review of the petition.

A paragraph has been added to prohibit SPLs from exceeding 180 dB within those portions of the Monterey Bay NMS and the Gulf of the Farallones and Cordell Bank NMSs that extend beyond 12 nm (22 km); also, at the Olympic Coast NMS received levels in the NMS should not exceed 180 dB in the area from shore to 23 nm (37.4 km) offshore in the months of December, January, March, and May of each year.

A modification has been made to § 216.183(e) to extend the East Coast OBIA south to 28° N. in order to include the entire southeastern United States critical habitat for the northern right whale.

For consistency, certain protective measures that were listed under § 216.183 *Prohibitions* have been relocated to § 216.184 *Mitigation.* In new § 216.184, § 216.184(d) has been revised to (1) clarify that operating the SURTASS LFA sonar source at an SPL greater than 180 dB at a distance of 12 nm (22 km) from any coastline is not authorized, and (2) correct the coordinates for the center of the Penguin Bank OBIA.

A sentence has been added establishing a ''buffer zone'' extending an additional 1 km (0.5 nm) beyond the 180-dB safety zone. As soon as a marine mammal (or sea turtle) is detected by the HF/M3 sonar within the buffer zone, the LFA sonar will either be turned off or not turned on.

A sentence has been added requiring the HF/M3 to cease ramp-up once a marine mammal is detected by the HF/M3.

A modification has been made to require monitoring to continue either for 15 minutes after the last transmission of an exercise, or until marine mammal behavior has returned to normal (based upon the observer's determination), whichever is later. If aberrant marine mammal behavior has not been observed before, during, or after the last series of transmissions, observations do not need to continue after 15 minutes.

A paragraph has been added requiring quarterly mission reports with the report including all active-mode SURTASS LFA sonar missions that have been completed 30 days or more prior to the date of the deadline for the report.

A sentence has been added to § 216.186(c) requiring an analysis of passive sonar systems (not previously analyzed) and an assessment of whether any system is feasible as an alternative to SURTASS LFA sonar to be provided at least 240 days prior to expiration of these regulations.

The proposed definition of ''single-ping equivalent'' has not been implemented and the term ''single-ping equivalent'' or ''SPE'' has been replaced by the term ''SPL.'' This change is warranted because the implementation of a 1-km (0.54-nm) buffer zone wherein SURTASS LFA sonar transmissions will be delayed or suspended for marine mammals makes the tracking of marine mammals between ''pings'' unnecessary.

Paragraph 216.185(c) has been amended by limiting the authority to board U.S. Naval vessels to Federal agencies with jurisdiction, such as NMFS, USFWS and the Coast Guard. As the SURTASS LFA sonar vessel will remain outside 12 nm (22 km) of U.S. coastal waters, state and local agencies do not have jurisdiction to board these vessels, unless under an existing cooperative enforcement agreement with NMFS.

As a result of consultation under section 7 of the ESA, paragraph 216.180(b) has been amended to include the Spitzbergen stock of bowhead whales.

NEPA

On July 30, 1999 (64 FR 41420), the Environmental Protection Agency (EPA) announced receipt of a Draft EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. The public comment period on the Draft EIS ended on October 28, 1999. On February 2, 2001 (65 FR 8788), EPA announced receipt of a Final EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of these documents. NMFS has reviewed the Navy's Final EIS and does not have any significant concerns with the findings contained therein. As a result, NMFS hereby adopts the Navy Final EIS as its own as provided by 40 CFR 1506.3 and finds that it is unnecessary to either prepare its own NEPA documentation on the issuance of these regulations nor to recirculate the Navy Final EIS for additional comments. The Navy's Final EIS is available at: *http://www.surtass-lfa-eis.com.*

ESA

On October 4, 1999, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA. NMFS concluded consultation with the Navy on this action on May 30, 2002. The conclusion of that consultation was that operation of the SURTASS LFA sonar system for testing, training and military operations and the issuance by NMFS of a small take authorization for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. A copy of the Biological Opinion issued as a result of that consultation is available at: *http://www.nmfs.noaa.gov/prot_res/overview/publicat.html.*

Classification

This action has been determined to be significant for purposes of Executive Order 12866. NMFS has determined that this final rule will provide NMFS and the public, through the Navy's monitoring and research program, with information on the SURTASS LFA sonar system's effect on the marine environment, especially on marine

mammals. Without an authorization under the MMPA, NMFS and the public are unlikely to receive this information. NMFS believes that obtaining this information is extremely important because SURTASS LFA sonar is not the only LF noise source in the world's oceans, and the scientific findings resulting from monitoring and research is likely to be directly applicable to other activities. In addition, this final rule, and LOAs issued thereunder, would impose appropriate mitigation measures for protecting marine mammals, sea turtles and other marine life. Without these regulations and LOAs, mitigation measures could not be required of the U.S. Navy. The cost to the Navy to implement the mitigation and monitoring measures cannot be fully determined at this time but these costs would be incurred through implementation of the LTM program that will be required under this final rule. NMFS believes that this cost would be approximately $ 1 million annually.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. As a result no regulatory flexibility analysis was prepared. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports. Other information requirements in the final rule are not subject to the PRA since they apply only to a single entity and therefore are not contained in a rule of general applicability.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 1, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart Q is added to part 216 to read as follows:

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Sec.

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

§ 216.180 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than two SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization:

(1) Atlantic Polar Biome:

(i) Boreal Polar Province (1/BPLR)(i.e., LFA sonar 180-dB exclusion zone);

(ii) Atlantic Arctic Province (2/ARCT);

(iii) Atlantic Subarctic Province (3/SARC);

(2) North Atlantic Coastal Biome:

(i) Northeast Atlantic Shelves Province (11/NECS),

(A) North/Irish Sea Subprovince,

(B) English Channel Subprovince,

(C) Southern Outer Shelf Subprovince,

(D) Northern Outer Shelf Subprovince, and

(E) Baltic Subprovince; and

(ii) Northwest Atlantic Shelves Province (15/NWCS),

(A) Newfoundland/Nova Scotia Shelf Subprovince,

(B) Gulf of St. Lawrence Coastal Subprovince,

(C) Gulf of Maine/Bay of Fundy Coastal Subprovince,

(D) Georges Bank/New York Bight Coastal Subprovince,

(E) Middle Atlantic Bight Coastal Subprovince,

(F) South Atlantic Bight Coastal Subprovince;

(3) South Atlantic Coastal Biome:

(i) Benguela Current Coastal Province (22/BENG);

(ii) Brazil Current Coastal Province (20/BRAZ);

(iii) Eastern (Canary) Coastal Province (12/CNRY);

(iv) Southwest Atlantic Shelves Province (21/FKLD);

(v) Guianas Coastal Province (14/GUIA);

(vi) Guinea Current Coastal Province (13/GUIN),

(A) Guiana Coastal Subprovince, and

(B) Central African Coastal Subprovince;

(4) Atlantic Westerly Winds Biome:

(i) Gulf Stream Province (5/GFST);

(ii) North Atlantic Drift Province (4/NADR);

(iii) North Atlantic Subtropical Gyral East Province (18/NASTE); and

(iv) North Atlantic Subtropical Gyral West Province (6/NASTW);
(5) Atlantic Trade Wind Biome:
(i) Caribbean Province (17/CARB);
(A) Gulf of Mexico Subprovince;
(B) Caribbean Sea Subprovince;
(ii) Eastern Tropical Atlantic Province (9/ETRA);
(iii) North Atlantic Tropical Gyral Province (7/NATR);
(iv) South Atlantic Gyral Province (10/SATL);
(v) Western Tropical Atlantic Province (8/WTRA);
(6) Mediterranean/Black Sea Biome:
(i) Mediterranean Sea Province (16A/MEDI);
(ii) Black Sea Province (16B/BLSE);
(7) Indian Ocean Coastal Biome:
(i) Australia/Indonesia Coastal Province (37/AUSW);
(ii) Eastern India Coastal Province (35/INDE);
(iii) Northwestern Arabian Upwelling Province (34/ARAB);
(iv) Eastern Africa Coastal Province (32/EAFR);
(v) Western India Coastal Province (36/INDW);
(vi) Red Sea, Persian Gulf Province (33/REDS);
(8) Indian Ocean Trade Wind Biome:
(i) Indian South Subtropical Gyre Province (31/ISSG);
(ii) Indian Monsoon Gyres Province (30/MONS);
(9) North Pacific Coastal Biome:
(i) Alaska Downwelling Coastal Province (65/ALSK),
(A) Canadian/Alaskan Coastal Subprovince,
(B) Aleutian Stream Coastal Subprovince,
(ii) California Current Province (66/CALC),
(A) Oregon-British Columbia Coastal Subprovince,
(B) Point Conception/Cape Mendicino Coastal Subprovince,
(C) Southern California Bight Subprovince, and
(D) Baja California Subprovince;
(iii) Central American Coastal Province (67/CAMR);
(iv) China Sea Coastal Province (69/CHIN);
(10) South Pacific Coastal Biome:
(i) East Australian Coastal Province (71/AUSE);
(ii) Humboldt Current Coastal Province (68/HUMB);
(A) Chilean Coastal Subprovince and
(B) Peruvian Coastal Subprovince;
(iii) New Zealand Coastal Province (72/NEWZ);
(iv) Sunda/Arafura Shelves Province (70/SUND);
(11) Pacific Polar Biome:
(i) North Pacific Epicontinental Sea Province (50/BERS);
(A) Bering Sea Subprovince;
(B) Okhotsk Sea Subprovince;
(ii) Reserved;
(12) Pacific Trade Wind Biome:
(i) Archipelagic Deep Basins Province (64/ARCH);
(ii) North Pacific Tropical Gyre West Province (56/NPTGW);
(iii) North Pacific Tropical Gyre East Province (60/NPTGE);
(iv) Pacific Equatorial Divergence Province (62/PEQD);
(v) North Pacific Equatorial Countercurrent Province (61/PNEC);
(vi) South Pacific Subtropical Gyre Province (59/SPGS);
(vii) Western Pacific Warm Pool Province (63/WARM);
(13) Pacific Westerly Winds Biome:
(i) Kuroshio Current Province (53/KURO);
(ii) North Pacific Transition Zone Province (54/NPPF);
(iii) Pacific Subarctic Gyres (East) Province (51/PSAGE);
(iv) Pacific Subarctic Gyres (West) Province (52/PSAGW);
(14) Antarctic Westerly Winds Biome:
(i) Subantarctic Water Ring Province (81/SANT),
(A) Atlantic Subantarctic Ring Subprovince;
(B) Indian Ocean Subantarctic Ring Subprovince;
(C) Pacific Ocean Subantarctic Water Ring Subprovince;
(ii) Subtropical Convergence Province (80/SSTC),
(A) Atlantic South Subtropical Convergence Subprovince;
(B) Indian Ocean South Subtropical Convergence Subprovince;
(C) Pacific Ocean South Subtropical Convergence Subprovince;
(iii) Tasman Sea Province (58/TASM);
(15) Antarctic Polar Biome:
(SURTASS LFA sonar exclusion zone);
(i) Antarctic Province (82/ANTA)
(ii) Austral Polar Province (83/APLR).

(b) The incidental take by Level A and Level B harassment of marine mammals under the activity identified in this section is limited to the following species and species groups:

(1) Mysticete whales—blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), northern right whale (*Eubalaena glacialis*), southern right whale (*Eubalaena australis*), pygmy right whale (*Capera marginata*), bowhead whale (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*).

(2) Odontocete whales—Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp. Lagenorhynchus spp.*, *Cephalorhynchus spp.* melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), ribbon seals (*P. fasciata*), gray seals (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), elephant seals (*Mirounga angustirostris* and *M. leonina*). Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

§ 216.181 Effective dates.

Regulations in this subpart are effective from August 15, 2002 through August 15, 2007.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and

the availability of marine mammals for subsistence uses.

§ 216.183 Prohibitions.

Notwithstanding takings authorized by § 216.180 and by a Letter of Authorization issued under §§ 216.106 and 216.188, no person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take any marine mammal by receiving a sound pressure level greater than 180 dB while operating under a Letter of Authorization in any geographic area for which a Letter of Authorization has not been issued;

(d) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization will ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within the area subjected to sound pressure levels of 180 dB or greater (safety zone) or within the 1 km (0.5 nm) (buffer) zone extending beyond the 180-dB safety zone, SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the safety and buffer zones; and

(2) There is no further detection of any marine mammal within the safety and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in § 216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in § 216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 source will not increase its sound pressure level once a marine mammal is detected; ramp-up may proceed once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar while under a Letter of Authorization, such that the SURTASS LFA sonar sound field exceeds 180 dB (re 1 μPa(rms)):

(1) At a distance of 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) Within any offshore area that has been designated as biologically important for marine mammals under § 216.183(f), during the biologically important season for that particular area;

(3) Within the offshore boundaries that extend beyond 12 nm (22 km) of the following National Marine Sanctuaries:

(i) Monterey Bay,

(ii) Gulf of the Farallones, and

(iii) Cordell Bank;

(4) Within 23 nm (37.4 km) during the months of December, January, March, and May of each year in the Olympic Coast National Marine Sanctuary.

(f) The following areas have been designated by NMFS as offshore areas of critical biological importance for marine mammals (by season if appropriate):

Name of area	Location of area	Months of importance
(1) 200-m isobath North American East Coast	From 28° N. to 50° N. west of 40° W	Year-Round.
(2) Antarctic Convergence Zone	30° E. to 80° E to 45° S. 80° E. to 150° E. to 55° S. 150° E. to 50° W. to 60° S. 50° W to 30° E. to 50° S.	October 1 through March 31.
(3) Costa Rica Dome	Centered at 9° N. and 88° W	Year-Round.
(4) Penguin Bank	Centered at 21° N. and 157° 30′W	November 1 through May 1.

§ 216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours;

(2) Use low frequency passive SURTASS LFA sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in § 216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization.

§ 216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each

quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of the vessel during the mission;

(2) Information on sonar transmissions as detailed in the Letter of Authorization; and

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 90 days prior to expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an analysis of new passive technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

§ 216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in § 216.180 must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application for an initial or a renewal of a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the specified geographical region where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each specified geographical region;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each specified geographic region for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§ 216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in § 216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.188 for the activity identified in § 216.180 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.187 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.184 and 216.185 and the Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity continues to be small, that the total number of marine mammals taken by the activity specified in § 216.180, as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.188 indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the list of areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 and subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.189, without modification, except for the period of validity and a listing of planned

operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

§ 216.191 Designation of Biologically Important Marine Mammal Areas.

(a) Biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by the public.

(b) In order for the National Marine Fisheries Service to designate offshore areas of biological importance for marine mammals under this rule, proponents must petition NMFS by requesting an area be added to the list of biologically important areas in § 216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammals within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for either primary feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration;

(d) If a petition is received without sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an area is biologically important for marine mammals and is not located within a previously designated area, NMFS will propose to add the area to § 216.184(f) and provide a public comment period of at least 45 days from the date of publication in the **Federal Register**.

(2) The National Marine Fisheries Service will publish its final determination in the **Federal Register**.

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Federal Register

Tuesday,
July 16, 2002

Part III

Department of Education

Office of Special Education and Rehabilitative Services; Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Applications for New Awards for Fiscal Year (FY) 2002

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2002 competitions under three programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act (IDEA), as amended. The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (three priorities); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (five priorities); and (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (four priorities).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in project activities qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit: If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Project Period: Each project funded in this notice is for a project period of up to 60 months.

Instructions for Transmittal of Applications

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The three programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, Personnel Preparation to Improve Services and Results for Children with Disabilities—CFDA 84.325, and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326 are included in the pilot project. If you are an applicant for a grant under any of the three programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for each of the three programs included in this notice at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines

between Paper and Electronic Applications) in the application packages.

Research and Innovation to Improve Services and Results for Children with Disabilities [CFDA Number 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority (1)—Research and Training Center on Scientifically Based Practices for Successful Early Childhood Transitions (84.324V)

Background

Early school success for young children with disabilities depends on the identification and implementation of scientifically based practices in programs supported by parts B and C of the IDEA. Effective transition services that help young children with disabilities and their families move from one service delivery system to another, such as childcare, healthcare, and early education, can enhance children's development and accomplishments at each subsequent level.

Effective preparation for kindergarten and early school holds promise of success for all children, including young children with disabilities. When children reach their third birthday, they transfer out of early intervention services under part C and into either preschool special education services or into other community-based services or programs. Young children with disabilities and their families experience the effects of transition as they move into an unfamiliar service delivery system. In turn, this transition process may affect early school success.

The use of scientifically based practices during transitions will boost cognitive ability and early literacy skills and encourage early identification and prevention of reading difficulties. These practices will also improve the ability of the States to meet the statutory and regulatory requirements for a smooth and effective transition.

Priority

As authorized under sections 672 and 673 of IDEA, the Assistant Secretary establishes an absolute priority for an Early Childhood Transition Research and Training Center to build on the existing research of successful early intervention and early childhood practices. The Center must identify, validate, and disseminate the most successful practices available for young children, ages birth through five, with disabilities and their families as the children grow and transition from early intervention services under part C into preschool services under part B, and eventually out of preschool special education programs. The Center must provide the conceptual framework and research for practices for implementing IDEA transition requirements.

The Center's activities must include, but are not limited to, the following:

(a) Implementing a research plan to identify and validate strategies that will maximize learning and development as children transition out of (1) early intervention services delivered under IDEA—part C (ages birth through two) and out of (2) preschool services delivered under IDEA—part B (ages three through five).

(b) Studying the multiple factors—including cultural factors—that affect children's transition experiences as these influences relate to later learning success. These factors must include the impact of family, school systems, and community resources.

(c) Identifying early school success predictors that can be documented during transition planning and addressed through IDEA services.

(d) Examining the interaction between young children's development and how service providers and teachers determine children's readiness in all areas of a child's development.

(e) Measuring the effectiveness of transition planning, with regard to the composition of teams that make decisions, types of transition planning services, settings where transition planning takes place, funding sources, and improved outcomes for young children with disabilities.

(f) Making it easier for researchers who promote the use of research findings and products to communicate and collaborate with one another.

(g) Improving linkages among researchers and providers to facilitate the exchange of knowledge related to or generated by the Center.

(h) Developing, validating, and disseminating—

(1) A curriculum for training early childhood transition professionals based on the knowledge gained from the Center's research activities; and

(2) Reports and documents on research findings and products from the Center in formats that are useful for specific audiences, including families, administrators, policymakers, early interventionists, related service personnel, teachers, and individuals with disabilities (see section 661(f)(2)(B) of IDEA).

(i) In planning and implementing its research and training, working together with part C lead agencies; preschool programs; parent training and information centers; community parent resource centers; professional and advocacy organizations; IHEs, including Historically Black Colleges and Universities; agencies and organizations involved in delivery of services to minority infants and toddlers with disabilities, especially those who are African American, Native American, Hispanic, and Asian American; and other agencies and organizations involved in providing services to infants and toddlers with disabilities and their families.

(j) Maintaining a Web site with current information on research findings.

(k) Disseminating findings through collaborative efforts with the Early Childhood Technical Assistance Center and other OSEP-funded projects.

(l) Conducting national and regional meetings, in collaboration with SEAs and LEAs, to assist providers in meeting the needs of young children entering and exiting IDEA service delivery systems.

(m) Using external and internal evaluators to measure and report to OSEP on the progress of the Center.

(n) Meeting with the OSEP project officer and appropriate OSEP staff within the first three months of the project to review the strategic work plan and the approach to dissemination.

(o) Funding each year as research assistants at least three graduate students who have concentrations in early childhood development and early childhood policy issues.

Other Requirements

The Center must also—

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of at least three members from part C lead agencies; three members from State agency preschool programs, one of whom is an early childhood transition coordinator; three parents of young children, ages birth through five, with disabilities; an early childhood service provider; and a certified kindergarten or regular education teacher; and

(b) In addition to the two-day Project Directors' Meeting listed in the General Requirements section of this notice, budget for an additional two-day trip annually to Washington, DC. The purposes of this additional trip are (1) to attend an additional Project Directors' meeting; and (2) to meet and collaborate with the OSEP project officer and other funded projects for purposes of cross-project collaboration and information exchange.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (2)—Center on Early Identification, Child Find, and Referral of Young Children with Disabilities (84.324G)

Background

Locating and accessing appropriate services within various early childhood systems can be particularly problematic for families of infants, toddlers, and preschoolers with disabilities. Families whose young children are in need of diagnostic services often experience lengthy periods of searching for the appropriate agency or agencies to provide these services. Timely referral to the LEA or part C Lead Agency (LA) can prevent these delays.

IDEA requires SEAs, LEAs, and LAs to carry out early identification, child find, and referral of infants, toddlers, and preschoolers with disabilities for evaluation and the provision of services under section 619 of Part B of IDEA, and under part C of IDEA.

Priority

As authorized under sections 672 and 673 of IDEA, the Assistant Secretary establishes a Center to identify and promote the use of effective models for early identification, child find, and referral for infants, toddlers, and young children with disabilities and their families.

The Center must carry out the following activities:

(a)(1) Conduct a comprehensive review and synthesis of the research literature on early identification, child find, and referral of infants, toddlers, and preschoolers with disabilities and those who are suspected of having disabilities; and (2) identify and investigate gaps in knowledge.

(b) Use the review and synthesis to determine the components of scientifically based models of early identification, child find, and referral designed to be implemented by SEAs, LAs, and their agency partners.

(c) Develop, validate, and disseminate effective scientifically based training units for use by SEAs, LAs, and their agency partners and assist these agencies in the implementation and evaluation of the training units. These units must be appropriate for implementation in all communities, including those with families representing diverse cultures.

(d) Through mechanisms including, but not limited to, an accessible Web site, broadly disseminate the training units and Center's findings on scientifically based practices in early identification, child find, and referral.

(e) In planning, developing, and implementing its research and training activities, work together with SEAs; LAs; parent training and information centers; community parent resource centers; professional and advocacy organizations; IHEs, including Historically Black Colleges and Universities; agencies and organizations involved in delivery of services to minority infants, toddlers, and preschoolers with disabilities, including those who are African American, Native American, Hispanic, and Asian American; and other agencies and organizations involved in providing services to infants, toddlers, and preschoolers with disabilities and their families.

(f) Consult with SEAs and LAs in which either the States' self-assessments or OSEP monitoring of the States' systems have identified early identification, child find, and referral as areas in need of improvement.

(g) Meet with the OSEP project officer in the first three months of the project to review the Center's proposed plans for (1) the literature review and (2) the development and implementation of the training units.

(h) Prepare the Center's findings and products in formats that are useful for specific audiences, including families, administrators, early interventionists, related service personnel, teachers, and individuals with disabilities (see section 661(f)(2)(B) of IDEA).

(i) Evaluate the effectiveness and impact of the training units and their implementation.

In carrying out these activities, the Center must examine the following with regard to identification, child find, and referral:

(a) The major characteristics of model programs.

(b) The roles and responsibilities of SEAs, LAs, and their respective partner agencies, such as the States' Departments of Health and Departments of Human Services.

(c) Scientifically based practices for improving the quality, acquisition, and implementation of the major components of these models by agencies responsible for these activities.

(d) Implementation of scientifically based training units with particular attention to areas of high density population, rural areas, and areas of high poverty.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (3)—Center on Students Requiring Intensive Social, Emotional, and Behavioral Interventions (84.324Q)

Background

In recent years, educators and mental health practitioners have fostered schoolwide efforts that promote for all children good behavior and adherence to a system of rules in schools. Educators and practitioners have been especially supportive of a model that typically incorporates three stages of prevention and intervention:

(1) The first stage, often called ''Primary Prevention'';

(2) The second stage, typically termed ''Secondary Prevention'' or ''At-Risk Intervention,''; and

(3) The third stage, sometimes called ''Tertiary'' or ''Intensive Intervention.''

The third stage addresses the needs of children who have failed to benefit from early intervention or whose unacceptable behavior, lack of maturation, or other weaknesses in social and emotional development indicate a serious deficit.

All who support this increasingly popular model agree that each stage is a necessary component, and a large number of OSEP-funded projects have targeted this tripartite approach. Nevertheless, research continues to document serious limitations in the relative effectiveness of interventions directed to the third group of children, those who require more intensive interventions and services.

Priority

As authorized under section 672 of IDEA, the Assistant Secretary establishes an absolute priority to support a Center to study and disseminate information on effective practices to improve outcomes for students with severe social, emotional, and behavioral deficits. The Center's focus encompasses students with, or at risk of, emotional disturbance, as well as students within other disability categories whose behavioral or emotional problems indicate a need for additional interventions. The focus includes students with ''acting out'' problems, as well as students who exhibit internalizing problems.

The Center must carry out the following activities:

(1) *Synthesize Research:* Conduct a literature review on the nature and efficacy of specific practices that are used in schools and other settings to improve results for students with social, emotional, and behavioral deficits.

(2) *Conduct Longitudinal Research:* Implement a quantitative and qualitative examination of the effectiveness of interventions for these students in three to five school districts, selected to represent a diversity of conditions, practices, and settings and to produce reliable findings that can be generalized to other settings.

(3) *Disseminate Findings:* Beginning in the second year of funding, implement a plan to provide usable information in suitable formats to other researchers and practitioners. While initially using information based on the literature review, the Center must eventually include information based on findings from the Center's research.

(4) *Establish and Convene an Advisory Group:* Establish and convene an advisory group to help support, guide, and define Center activities. The advisory group must meet at least once a year in Washington, DC. The group must include members of families with children that have disabilities, and representatives of the medical community, educational agencies, mental health agencies, and other agencies that identify and serve children with social, emotional and behavioral deficits.

An applicant should provide evidence of agency support for its proposal but refrain from securing specific commitments to serve on the advisory group until after the award has been made.

(5) *Research Findings and Products:* Produce research findings and products in formats that are useful and accessible for specific audiences including: professional development personnel; parents and other family members of affected children; local, State, and national policymakers; and the broad range of service providers. The Center must collaborate and coordinate dissemination activities with other OSEP-funded research and dissemination Centers that address the emotional and behavioral needs of children.

During the fourth or fifth year of the project, the Center must plan for and implement a national conference or other culminating event to foster the dissemination of findings and gauge reactions from affected parties.

(6) *Budget for Trips:* The Center must budget for three trips to Washington, DC during the first year, and two trips to Washington, DC each subsequent year. One trip would be for the purpose of meeting with the OSEP project officer during the first month of the project award to review the design of the project. A second annual trip is intended to meet the ''General Requirements'' section of this notice. The third annual trip would be for the purpose of meeting and collaborating with the OSEP project officer on matters other than the design of the project.

Cooperative Agreement

During the first three months of the award, the Center must work with the OSEP project officer to develop a strategic plan that will serve as the centerpiece of the cooperative agreement. The agreement will provide the foundation for all subsequent work in this project. Cooperative agreements are grants in which the Government has a direct interest and works closely with the grantee to ensure that the intentions and requirements of the priority are carried out.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Eligible Applicants: Eligible applicants for Absolute Priorities 1, 4 and 5 are: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations. Eligible applicants for Absolute Priority 2 are IHEs. Eligible applicants for Absolute Priority 3 are nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The regulations for this program in 34 CFR part 304; and (c) The selection criteria chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Priorities

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Center for Educating and Providing Early Intervention Services to Children with Autism and Autistic Spectrum Disorders (84.325g)

Background

Increasing numbers of children have been diagnosed with autism and autistic spectrum disorders (ASD), such as autistic disorder, Asperger's disorder, atypical autism, and pervasive developmental disorder (PDD). These children are receiving special education and related services under part B of IDEA and early intervention services under part C of IDEA.

The research literature, including the National Academy of Sciences (NAS) report, ''Educating Children with Autism'' (2001), recommends strategies to enhance these children's development and improve their educational results. The report identifies the need for additional training for educators and other personnel responsible for planning and providing special education, related services, and early intervention services. A copy of the report can be obtained by writing to NAS at the following address: 2001 Wisconsin Avenue, NW., Washington, DC 20007. The report is also available at the following Web site: *http://www.nap.edu*

In developing this priority, the Assistant Secretary has incorporated several elements that the Assistant Secretary believes are necessary for a Center to be effective in addressing the educational and early intervention needs of children with autism and ASD. These elements include—

(1) Multiple approaches to improving education and early intervention for children with autism and ASD;

(2) Site-based professional development;

(3) Professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved;

(4) Follow-up professional development provided in the work settings of the training participants; and

(5) Training provided to teams.

Priority

The Center must do the following:

(a)(1) Synthesize data on methods and practices related to special education and early intervention for children with autism and ASD. (2) Using information in the NAS report ''Educating Children with Autism'' and other sources, identify an array of methods and practices that may improve education and early intervention for these children.

(b) Verify that scientifically based research shows that the methods and practices in paragraph (a) are effective. This verification may be done by a representative panel of individuals knowledgeable about scientific method and education and about early intervention for children with autism and ASD, or by other methods.

(c) In carrying out activities in (a) and (b) the Center should coordinate with the Center for Children with Other Health Impairments, Tramatic Brain Injury, Orthopedic Impairments, and Developmental Delays Who Have Neurologically Based Disabilities.

(d) Provide site-based training. In providing this training, the Center must—

(1) Identify sites that are—

(A) Distributed across the country in order to reduce both travel time and costs for trainees,

(B) Effectively implementing the scientifically-based methods and practices that have been verified by the Center, and

(C) Willing to provide trainees opportunities to see and engage in the identified methods and practices in authentic settings; and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. Trainees must include representatives from lead agencies, LEAs, SEAs, early intervention personnel, related service personnel, parent training and information projects, Regional Resource Centers, parents, special and regular educators, parent advocacy groups, and other groups and agencies. Whenever practical, trainees should attend the training in teams.

(e) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, summer programs, dissemination of training materials that the Center has developed, and other similar activities.

(f) Provide follow-up training and technical assistance to all trainees who desire to develop and implement practices and methods to improve programs in their home communities.

(g) Include an evaluation component based on clear, measurable performance and outcome goals, if possible, clearly linked to results.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Maximum Award

Note: The maximum award amount of $1,000,000 is exclusive of any matching funds provided by SEAs, LEAs, or agencies for site-based professional development.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 2—Center to Guide Personnel Preparation Policy and Practice in Early Intervention and Preschool Education (Birth to Five)(84.325J)

Background

The cornerstone of successful implementation of the IDEA Amendments of 1997 is the assurance that infants, toddlers, and preschoolers with disabilities are served by an adequate number of highly qualified personnel.

Priority

The Assistant Secretary establishes an absolute priority to support a Center to guide the development of policy and practice for personnel preparation in early intervention and preschool education. The Center is to do this by examining issues and recommending actions to ensure an adequate supply of well-qualified personnel to serve infants, toddlers, and preschoolers with disabilities. These personnel include early intervention service providers, special educators, speech-language pathologists, audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, pediatricians and other physicians, and paraprofessionals.

The Center must do the following:

(a) Conduct a comprehensive review of literature in the following subject areas:

(1) Licensure and certification standards and requirements, including alternative certification options, for personnel serving infants, toddlers, and preschoolers with disabilities. This review must include, at a minimum, available information across all States and for each type of personnel, on —

(i) Motivations for changes in, and resulting modifications to, licensure standards and requirements; and

(ii) Intended versus actual impacts of these standards and requirements, and changes to these standards and requirements, on personnel quantity and quality.

(2) Preservice preparation for personnel to serve infants, toddlers, and preschoolers with disabilities. The purpose of this review is to develop a profile of current training programs for all types of personnel who serve infants, toddlers, and preschoolers with disabilities. The profile must provide detailed descriptions of training programs at the institutional, State, and national levels. The review must include, at a minimum, available information on—

(i) Mechanisms for entering programs, such as admissions criteria and recruitment strategies;

(ii) Features of programs, such as program level (associate, undergraduate, graduate), faculty-trainee ratios, the ratios of tenure-track faculty to adjunct faculty, internal and external sources of support (including State support and OSEP and other Federal support), training emphasis (for example, multi-age program, multi-age program with early childhood focus, early-intervention program, preschool program), and program history;

(iii) Content features of programs, such as alignment with the principles and requirements of IDEA, alignment with current licensure and certification standards, the extent to which program content reflects research-based knowledge and practice, practicum opportunities, cross-disciplinary arrangements with other relevant programs, and collaborative relationships with service providers for infants, toddlers, and young children with disabilities to provide employment support;

(iv) Demographic characteristics of students, such as age, prior training and experience, racial and cultural diversity, and disability;

(v) Indicators of program quality assurance, such as procedures for assessing program quality (including on-the-job performance of students completing the program); and

(vi) Program outcomes, such as (A) the number of students completing the program; and (B) employment data regarding relevant positions for students completing the program, including the length of employment and proximity to the location of the training program.

(3) Current and projected supply of, and demand for, personnel to serve infants, toddlers, and preschoolers with disabilities. This review must include, at a minimum, available information, at the national, State, and local levels, on—

(i) The extent to which there exists, or will exist, an imbalance between available personnel and demand for personnel;

(ii) The extent to which identified discrepancies in supply and demand vary by personnel type and locality; and

(iii) Factors that influence discrepancies in supply and demand, such as salaries and wages, general economic climate, population demographics, licensure and certification standards and requirements, and proximity to relevant training programs.

(b) Identify critical gaps in current knowledge, and design and conduct a program to address these gaps. The project must identify the most critical gaps on the basis of the review described in paragraph (a). The program to address the gaps must—

(1) Be guided by a conceptual framework that (i) integrates the most pressing needs for expanded knowledge; and (ii) yields information that can be used to develop policies and practices at all levels (Federal, State, and local, as well as in institutions of higher education);

(2) Use a scientifically based research and evaluation methodology that is reviewed and accepted by panels of content, research, and evaluation experts. The project must identify these panels in collaboration with OSEP staff and convene the panels; and

(3) Be designed to enhance, not duplicate, any current research and evaluation efforts, including those supported by OSEP and other Federal agencies.

(c)(1) Develop and disseminate recommendations regarding policy and practice. On the basis of the review conducted under paragraph (a), and the results of the program designed and conducted under paragraph (b), the project must develop recommendations for policy and practice related to: meeting current and projected demand for qualified personnel; establishing quality licensure and certification standards and requirements; and providing effective training programs that produce highly qualified personnel to serve infants, toddlers, and preschoolers with disabilities.

(2) Recommendations regarding policy and practice must be reviewed and accepted by panels of experts in the identified topics. The project must identify these panels in collaboration with OSEP staff and convene the panels.

(3) The project must design and carry out dissemination activities in collaboration with: OSEP technical assistance providers and disseminators; professional organizations representing the various disciplines involved in the provision of services to infants, toddlers and preschoolers with disabilities; and organizations and associations that

represent policymakers at the Federal, State, and local levels.

(4) Dissemination activities must incorporate the use of current communications technology and include information that is available and accessible through a Web site. Documents must be in an accessible form.

(d) Collaborate with OSEP staff in strategic planning throughout the term of the project. The Center must schedule a meeting in Washington, DC with OSEP to review the proposed project activities within one month of the project award date.

(e)(1) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the ''General Requirements'' section of this notice, and the meeting mentioned in paragraph (d), budget for two additional meetings in Washington, DC to collaborate with the Federal project officer, to share information, and to discuss issues related to the development of models, evaluation, and project implementation issues.

(2) A proposed project must also include in its budget costs associated with convening panels of experts as identified under paragraphs (b) and (c).

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (3)—Statewide Models for Ensuring That Special Education Students in Inclusive Schools are Served by Highly Qualified Teachers (84.325M)

Background

The percentage of students with disabilities served in settings with nondisabled students is rising. There must be a corresponding increase in the number of regular and special education teachers well prepared to provide these children access to the general education curriculum and opportunities to meet high standards.

Standards for State licensure and certification and for training programs and the preservice training of regular and special educators must be aligned to incorporate the research-based knowledge and skills that regular and special education teachers need to meet the needs of these children.

Priority

The Assistant Secretary announces an absolute priority to establish a support center to develop exemplary models for building statewide systems of training and improved licensure and certification. These systems are needed to ensure that beginning regular and special education teachers are well prepared to meet the learning and behavioral needs of children with disabilities.

The Center must do the following:

(a) Identify States that are committed to—

(1) Establishing a team of decisionmakers—such as, elected officials, faculty at teacher training institutions, personnel directors, and others within the State—that represents the full spectrum of personnel responsible for ensuring that regular and special education teachers are well prepared to effectively promote learning for all students. This team must be committed to support change within the State.

(2) Improving teacher licensure and certification standards for regular and special education teachers. These standards must reflect the research-based knowledge and skills that teacher candidates need to ensure that all students, including children with disabilities, have access to the general education curriculum and meet high academic standards;

(3) Establishing or revising a system of accountability for teacher quality to ensure that personnel licensed or certified in the State demonstrate competency in content and pedagogical knowledge and skills that—

(i) The improved licensure and certification standards require;

(ii) Are research-based; and

(iii) Lead to improved outcomes for children with disabilities.

(4) Working with all institutions of higher education and other entities in the State, including LEAs, that provide preservice preparation and staff development for regular and special education teachers to ensure that all professional development in the State is—

(i) Founded on training program standards that are aligned with improved, research-based certification or licensure standards;

(ii) Designed to incorporate and assess knowledge and skill mastery in research-based content and pedagogy;

(iii) Part of a continuous system that incorporates preservice preparation, mentoring and induction for beginning teachers, and continuing, comprehensive staff development; and

(iv) Designed to establish and promote partnerships between preservice training programs and local schools and LEAs.

(5) Cooperating with the Center to permit ongoing, comprehensive study and documentation of all aspects of the model as it progresses;

(6) Reducing burden and streamlining the process of model development by coordinating efforts with other initiatives and activities in the State, including those supported with Federal funds.

(b) Establish an advisory panel of representatives from national organizations—such as the American Federation of Teachers, National Education Association, Association of American Educators, Education Leaders Council, Council of Chief State School Officers, National Association of State Directors of Teacher Certification, and National Council on Teacher Quality—that together represent the full spectrum of organizations responsible for ensuring that regular and special education teachers are well prepared. These partners must advise the Center and assist it in securing expert support to meet the model development needs of the participating States.

(c) Design and structure the operation and management of the Center to—

(1) Be most responsive to the technical assistance needs identified by the participating States as they proceed with their commitment;

(2) Use current communications technology to plan and implement the activities of the Center;

(3) Identify and describe all aspects and stages of the models as they evolve in each State, including all factors in each State that may influence the process of developing a model;

(4) Provide constructive feedback to each State;

(5) Establish and carry out formal agreements with each State that clearly specify the contributions and responsibilities of the State and the Center. The Assistant Secretary urges each State and the Center to contribute fiscally toward developing a model;

(6) Establish a clearinghouse to provide links to resources and services the State may use to enhance (i) the research-based knowledge and skills; and (ii) the quality of preservice preparation and staff development; and

(7) Disseminate, through a variety of mechanisms, the models developed within each participating State, the factors that influenced the development of the model, and the products and outcomes identified by the Center. Dissemination mechanisms must include collaborative arrangements with appropriate technical assistance and dissemination centers funded by the Department of Education.

(d) Design and conduct a comprehensive evaluation of all aspects of the work of the Center with clearly measurable goals and objectives. This evaluation must be designed to guide refinements to the structure, activities, management, and products of the Center in order to improve the ultimate effectiveness of the Center;

(e) Fund, as project assistants each year, at least three doctoral students who have concentrations in relevant topics such as special education, teacher education, curriculum and instruction, and educational policy;

(f) Obtain and submit with the application for this priority strong letters of commitment from —

(1) *Identified States.* These letters of commitment must respond to paragraphs (a)(1)–(6); and

(2) *National organization partners.* These letters of commitment must describe the resources and expertise the partners will contribute to the work of the Center; and

(g) In addition to the annual two-day Project Directors meeting in Washington, DC mentioned in the ''General Requirements'' section of this notice, projects must budget for two additional meetings in Washington, DC to collaborate with the Federal project officer to share information and discuss issues related to the development of model, evaluation, and project implementation.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the Center is making a positive contribution and its strategies are demonstrating the potential for disseminating significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 4—Research and Training Center to Prepare Personnel to Promote Parent and Professional Collaboration (84.325R)

Background

In the fall of 2001, OSERS held seven public forums on the reauthorization of the Individuals with Disabilities Education Act (IDEA). One of the most frequent concerns expressed by parents and professionals centered on their lack of skills and knowledge in trying to develop collaborative working relationships with each other in special education planning. This planning includes initial evaluations, determinations of eligibility, meetings about the Individualized Family Service Plan (IFSP) and Individualized Education Program (IEP), and continuing decisionmaking regarding the children's academic or functional behavior.

Efforts to establish collaborative working relationships in planning for children with disabilities were likely to slip into adversarial conflicts because the two parties lacked the skills to work out disagreements. Moreover, both parties involved in the complex decisionmaking about these children focused on the difficulties of building positive interactions based on mutual trust.

There was a strong feeling that training in collaborative strategies might prevent misunderstandings and differences of opinion in planning for these children and reduce the possibilities of mediation processes, due process hearings, and lawsuits.

In developing this priority, the Assistant Secretary has incorporated several elements that the Assistant Secretary believes are necessary for a center to be effective in improving parent and professional collaboration. These include (1) multiple approaches to improving parent and professional collaboration; (2) site-based professional development; (3) professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved; (4) follow-up professional development provided in the work settings of the training participants; and (5) training provided to teams.

Priority

As authorized under sections 672, 673 and 685 of IDEA, the Assistant Secretary announces this absolute priority for the purpose of improving the interaction of parents and professionals in collaboratively planning and implementing early intervention and educational programs for children with disabilities.

The Center must do the following:

(a) Review and synthesize research and examine the current and most-promising practices across the country to improve parent and professional collaboration.

(b) Verify by scientifically based research that practices identified in paragraph (a) are effective. This verification may be done (i) by a representative panel of individuals knowledgeable about scientific method and about building effective parent and professional collaboration, or (ii) by other methods.

(c) If the panel fails to identify methods and practices that are scientifically based, identify for the interim some promising practices to be used for training. However, the Center must implement procedures to develop scientifically based models and approaches for training parents and professionals.

(d) Develop a coordinated program of research to address gaps in knowledge.

(e) Make efforts to establish a cooperative partnership with Consortium for Appropriate Dispute Resolution in Special Education (CADRE) to coordinate activities regarding mediation.

(f) Establish an advisory panel, which may be identical to the evaluation panel referred to in (b) above. A representative from CADRE should be on the advisory panel.

(g) Provide site-based training. In providing this training, the Center must—

(1) Select sites that are (i) distributed across the country in order to reduce both travel time and costs for trainees; (ii) effectively implementing the scientifically based methods and practices that have been verified by the Center; and (iii) willing to serve as training sites where trainees will be provided opportunities to see and engage in the identified methods and practices in authentic settings; and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. These trainees must include personnel from lead agencies, local educational agencies (LEAs), State educational agencies, parent training and information projects, Regional Resource Centers, the National Technical Assistance Center to Parents, parent advocacy groups, and other agencies, groups, and programs. If practical, trainees should attend the training in teams.

(h) Provide follow-up training and technical assistance to all trainees who desire to develop and implement a program to improve parent-professional collaboration in their home community.

(i) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, dissemination of training materials that the Center has developed, and similar activities. If possible, the Center should take advantage of training activities using advanced technology.

(j) Develop a plan to conduct several leadership training academies for both parents and professionals related to parent and professional collaboration in order to promote the likely development of new methods and practices.

(k) Train parents and professionals to work together productively at the State and local levels to improve results for children with disabilities. Training should enable participants to work together successfully at school, LEA, and State levels; to identify and implement best practices; to improve policy, implement changes in systems, and promote flexibility and accountability for results, while focusing on successful approaches; and to enhance parental involvement in improving special education and student outcomes.

(l) Conduct an evaluation based on clear, measurable performance and outcome goals that are related to parent and professional collaboration and, if possible, clearly linked to improving results.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the Center is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge—to improve collaboration.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 5—Center for Children with Other Health Impairments, Traumatic Brain Injury, Orthopedic Impairments and Developmental Delays Who Have Neurologically Based Disabilities (84.325T)

Background

Children with neurological impairments may be eligible for services under a number of categories under the Individuals with Disabilities Education Act (IDEA). These categories include Other Health Impairments (OHI), Traumatic Brain Injury (TBI), Orthopedic Impairments (OI), and Developmental Delays. Infants and toddlers may also have neurologically based developmental delays or diagnosed conditions that make them eligible for services under part C of IDEA. This priority addresses the needs of a wide range of children with neurological impairments who are eligible under IDEA and who require similar types of educational interventions or early intervention services.

Many children in the OHI category are identified because of Attention Deficit Disorder/Attention Deficit Hyperactive Disorder (ADD/ADHD).

TBI is an acquired neurological disorder that typically impacts learning and behavior, though academic skills per se are not always impaired. Many of the problems involve difficulties with memory, organization, and behavior that are not like those experienced by children with ADD/ADHD.

Children identified with OI commonly have concomitant congenital neurological disorders involving the brain that impact learning. For example, spina bifida is the most common severely disabling birth defect in the United States. Children with spina bifida are often unable to walk, but problems with math and attention are also common. Children with cerebral palsy have difficulties with ambulation, but the neurological basis for the impairment often also impacts learning.

The Assistant Secretary is establishing a Center for educating and providing early intervention services to children with neurological disabilities who are eligible under IDEA. The Center will ensure that parents and professionals have the most current, scientifically based methods and practices for planning and implementing educational and early intervention services to improve results for these children.

In developing this priority, the Assistant Secretary has incorporated several elements that he believes are necessary for a center to be effective in addressing the educational and early intervention needs of children with neurological impairments. These include (1) multiple approaches to improving education and early intervention of children with neurologically based disabilities; (2) site-based professional development; (3) professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved; (4) follow-up professional development provided in the work settings of the training participants; and (5) training provided to teams.

Priority

As authorized under sections 673 and 685 of IDEA, the Assistant Secretary announces an absolute priority to establish a Center for educating and providing early intervention services to children with OHI, TBI, OI, and developmental delays who have neurologically based disabilities.

The Center must do the following:

(a)(1) Synthesize available data on methods and practices for serving children with neurologically based disabilities; and (2) identify an array of scientifically based methods and practices that may improve the education of eligible children.

(b) Verify that these methods and practices are effective through scientifically based research that is done by a representative panel of individuals knowledgeable about scientific method and about the education of eligible children with neurologically based disabilities, or by other methods.

(c) In carrying out the activities in (a) and (b) the Center must coordinate with the Center for Educating and Providing Early Intervention Services to Children with Autism and Autistic Spectrum Disorders.

(d) Provide site-based training. In providing this training, the Center must—

(1) Select sites that are (i) reasonably distributed across the country in order to reduce both travel time and costs for trainees; (ii) effectively implementing the scientifically based methods and practices that have been verified by the Center; and (iii) willing to provide trainees opportunities to see and engage in the identified methods and practices in authentic settings, and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. These trainees must include personnel from lead agencies, local educational agencies, State educational agencies, parent training and information projects, Regional Resource Centers, parent advocacy groups, institutions of higher education, related service providers, and other groups and programs. If practical, trainees should attend the training in teams.

(e) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, dissemination of training materials that the Center has developed, and other activities.

(f) Provide follow-up training and technical assistance to all trainees who desire to develop and implement a program to improve the education of eligible children in their home community.

(g) Conduct an evaluation based on clear, measurable performance and outcome goals related to the education and early intervention for children with neurologically based disabilities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities

Purpose of Program: The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Technical Assistance Center on Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education (84.326E)

Background

The National Academy of Sciences (NAS) recently completed a congressionally mandated study on minorities in special education. The NAS report supports the data in the Twentieth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act: 1998 indicating that African Americans are overrepresented in the mentally retarded category and Native Americans are overrepresented in the learning disabilities category. Both reports have similar data on disproportionate over-or under representation for Hispanics and for Asians and Pacific Islanders.

The NAS report also includes information on the special education placement rate by States of students from culturally diverse backgrounds. The information indicates a wide variation among States and notable inconsistencies within States.

The report concludes by providing practical recommendations that can be implemented by State educational agencies (SEAs) and local educational agencies (LEAs) to reduce disproportionate representation of culturally and linguistically diverse students in special education.

Section 618(c) of IDEA requires States to collect and examine data on students by disability and race to determine if significant disproportionate representation by disability categories or placement exists based on race. There is some evidence that SEAs and LEAs are experiencing difficulty with analyzing and interpreting the data and need assistance in developing plans and strategies to address disproportionate representation.

Priority

This priority establishes a center to provide technical assistance enabling SEAs and LEAs to effectively address and reduce incidences of disproportionate representation of minorities in special education resulting from inappropriate or ineffective educational practices.

The Center's activities must include, but are not limited to, the following:

(a) Collaborating with Project Forum, currently at the National Association of State Directors of Special Education (NASDSE), to determine the level of compliance for each State in collecting

the data required in section 618(c) of IDEA.

(b) Assisting SEAs with analyzing and interpreting the data collected on representation of minorities in special education.

(c) Assisting SEAs with developing a plan to address disproportionality using the recommendations in the NAS report and focusing on effective early intervention, reading, and behavioral programs.

(d) Summarizing and disseminating—through a Web site and by other means—reports and documents on research findings and related topics to guide policy and practice.

(e) Conducting national and regional meetings, in collaboration with other centers such as the Regional Resource Centers, to help SEAs and LEAs address disproportionate representation of minorities in special education.

(f) Communicating and collaborating with—

(1) Other technical assistance centers, including the Elementary and Middle School Technical Assistance Center, Regional Resource Centers, Federal Resource Center, projects funded under the priority for ''Linking Policy and Practice Audiences with the 1997 Amendments of IDEA,'' Regional Educational Laboratories, and the planned national center for Reading First technical assistance;

(2) Organizations including NASDSE, the Council for Exceptional Children, 100 Black Men, and the National Association of Bilingual Education (NABE); and

(3) Other projects funded by OSEP concerning effective practices for reducing disproportionate representation.

(g) Communicating and collaborating with reading and behavioral research centers to ensure that LEAs and SEAs incorporate effective scientifically based reading and behavioral strategies into their plans for addressing disproportionate representation.

(h) Collaborating with institutions of higher education—including Historically Black Colleges and Universities, Hispanic-serving institutions, and other minority institutions—and recipients of State Improvement grants to produce quality teachers by designing and implementing scientifically based early intervention, reading, behavioral, and classroom management practices.

The Center must also do the following:

(a) Establish, maintain, and meet at least annually with an advisory committee—consisting of representatives of SEAs and LEAs, individuals with disabilities, parents, educators, professional organizations and advocacy groups, researchers, and other appropriate groups—to review and advise on the Center's activities and plans. The committee must include membership that represents urban school and minority populations.

(b) In addition to the two-day Project Directors' meeting in Washington, DC mentioned in the General Requirements section of this notice, budget for an additional two-day trip annually to Washington, DC (1) to attend an additional Project Directors' meeting and (2) to meet and collaborate with the OSEP project officer and other funded projects for purposes of cross-project collaboration and information exchange; and

(c) Budget for at least a monthly trip to attend appropriate meetings convened by the Department of Education (such as the regional Improving America's Schools conferences), NABE, NASDSE, and other Centers and organizations.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 2—Center to Improve Access to the General Education Curriculum for Students with Disabilities at the Elementary and Middle School Levels (84.326K)

Absolute Priority

Background

The 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA '97) created expectations that students with disabilities would be included in State and local reform and accountability efforts. IDEA required that students with disabilities have access to the general curriculum and that States provide for the participation of students with disabilities in State and district-wide assessments and public reporting of the assessment results. IDEA also required States to establish performance goals for students with disabilities.

The No Child Left Behind Act of 2001 (NCLB), which reauthorized the Elementary and Secondary Education Act (ESEA), further strengthened the accountability for results for children with disabilities. Under NLCB each State must develop and implement a single, statewide accountability system that applies the same high standards of achievement to all students, including students with disabilities, and ensures that all school districts and public schools in the State make adequate yearly progress. The State's definition of adequate yearly progress must include separate annual measurable objectives for continuous and substantial improvement in mathematics and reading for all students and for each of four groups, including students with disabilities.

The overall quality of services children with disabilities receive varies widely by LEAs and across States. Many children are performing below their potential.

In trying to improve this situation, national technical assistance activities can play a pivotal role in building the capacity States need to support schoolwide change.

Identifying effective, scientifically validated practices; disseminating and replicating them through national, State, and local channels; and evaluating their use with children with disabilities has the potential to strengthen the overall education system and to improve achievement for all children, including children with disabilities.

Priority

The purpose of this priority is to increase access to and improve the quality of education in the general curriculum in areas of reading, language arts, mathematics, and science for children with disabilities in elementary and middle schools.

The Center must do the following:

(a) At the national level—

(1) Collaborate with the Office of Educational Research and Improvement's new ''What Works Clearinghouse'' to identify studies that may represent scientifically valid practices first in the area of reading and

language arts (particularly, with regard to children who do not respond to class-wide interventions), next in mathematics, and then in science;

(2) Work with researchers and developers to incorporate effective educational strategies based on scientifically based research;

(3) Support work to implement research-based information and instructional practice at national, State, and local levels.

(b) At the State level, collaborate with the Regional Resource Centers (RRCs) to help States —

(1) Establish measurable annual IEP objectives for continuous and substantial improvement for students with disabilities;

(2) Strengthen efforts to continuously improve access to and the quality of education in the subject areas; and

(3) Assist States in ''scaling up'' scientifically based practices through existing in-State technical assistance systems.

(c) Disseminate findings and approaches to appropriate audiences through the project's communication mechanism and the collaborative national and State partnerships;

(d) At the local level—

(1) Identify a number of LEAs (i) that have successfully used scientifically based practices to monitor and effect continuous and substantial progress for students with disabilities; and (ii) that are willing to work with other LEAs that have been less successful;

(2) Provide continuous assistance to the LEAs to help them work with less successful LEAs; and

(e) At the local level—

(1) Identify a number of LEAs that have been less successful in their efforts to continuously monitor progress and show evidence of progress—first in reading and language arts, next in mathematics, then in science;

(2) In concert with the successful LEAs, provide training and technical assistance through other means to help schools in less successful LEAs adapt and implement scientifically based practices;

(3) Observe and document the process of change; and

(4) Help less successful LEAs build capacity to solve problems.

(f) Establish an evaluation mechanism to continuously analyze the implementation of scientifically based practices, the outcomes of the technical assistance provided, including effect on student academic outcomes. The evaluation should not only document successful practices, but, also—

(1) Analyze less successful approaches to technical assistance to determine what changes could strengthen those approaches;

(2) Examine patterns and strategies for implementing effective practices across successful LEAs;

(3) Identify research areas of limited knowledge where further research is needed to identify effective practices; and

(4) Compile documentation to assist other LEAs and other technical assistance providers in implementing research-based practices.

(g) Develop training materials to support and train, on site, participating RRCs, States, and LEAs.

(h) Prepare and disseminate information and products for specific audiences, as appropriate, such as parents, administrators, teachers, related-services personnel, researchers, and individuals with disabilities.

(i)(1) Communicate, collaborate, and form partnerships, as appropriate, with entities such as technical assistance providers at national, regional, and local levels; centers that are part of the Special Education Technical Assistance and Dissemination Network; the National Center on Educational Outcomes; OSEP-funded projects; business and professional organizations; and universities.

(2) In particular, the project must build and maintain communication and collaboration with research and demonstration projects that are addressing issues related to the focus of this priority.

(j) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of SEAs and LEAs, individuals with disabilities, parents, educators and other interested parties—such as, professional organizations, and advocacy groups, researchers, persons conversant with literature on reform and change, and other appropriate groups—to review and advise on the Center's plans, products, and activities.

(k) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the ''General Requirements'' section of this notice, budget for two additional trips annually to Washington, DC (1) to attend the Technical Assistance and Dissemination Project Directors' meeting and (2) to meet and collaborate with the OSEP project officer and with other projects focusing on access to the general education curriculum.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards. The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 3—Center to Promote Involvement by Minority Institutions in Discretionary Programs under IDEA (CFDA 84.326L)

Background

Congress has concluded that success in educating children with disabilities from minority backgrounds can be improved if we increase the participation by Historically Black Colleges and Universities (HBCUs), and other institutions of higher education whose minority student enrollment is at least 25 percent (OMIs) in awards under IDEA. These awards include grants, cooperative agreements and contracts (section 661(d)(2) of IDEA).

Priority

The purpose of this priority is to improve educational results for children with disabilities by supporting a national center to: (a) Promote the participation by, and increase the number of awards to HBCUs and OMIs in competitions under IDEA designed to prepare personnel; and (b) increase the capacity of HBCUs and OMIs to prepare personnel to work with children with disabilities.

The Center must do the following:

(a) Establish and maintain contacts with HBCUs and OMIs.

(b) Analyze the performance of HBCUs and OMIs as a basis for providing technical assistance to them, especially in (1) recruiting and retaining students in personnel preparation programs; (2) improving the quality of those programs; (3) placing students after graduation; (4) and related activities that contribute to improved results for children with disabilities;

(c) Develop materials and implement strategies that are necessary to carry out the Center's activities.

(d) Prepare and disseminate to the HBCUs and OMIs materials explaining

personnel preparation competitions under section 673 of IDEA.

(e)(1) Analyze the results of each applicable discretionary grant competition under IDEA in terms of the degree to which HBCUs and OMIs applied, and the degree to which they were successful; and (2) submit this analysis to the Department and the HBCUs and OMIs served by the project.

(f) Disseminate practices found to be effective (1) to assist with the development of new special education personnel preparation programs in HBCUs and OMIs; and (2) to expand existing special education programs.

(g) Provide professional development to faculty to ensure that current research knowledge and methods are used in all special education personnel preparation programs in HBCUs and OMIs.

(h) Increase the participation of faculty from HBCUs and OMIs at national and State policy-setting meetings.

(i) As requested by the Department, provide advice on strategies to further the purposes of part D of IDEA.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 4—National Center on Monitoring and Evidence-Based Decisionmaking (CFDA 84.326Y)

Background

Monitoring and enforcement of IDEA has always been a topic of great concern among advocates, LEA and State administrators, and Federal officials. The Assistant Secretary is supporting an effort to implement a focused monitoring system in which data collection and a small number of carefully chosen priorities drive the process, and intervention and enforcement occur according to set criteria. Although this model system is replicable at the State and local levels, there is still a pressing need to assist States in their efforts to design, implement, and manage data systems and compliance-monitoring processes that can support data-based decisions about special education.

Priority

The Assistant Secretary announces an absolute priority for a technical assistance center to support the implementation of focused monitoring and, thereby, help SEAs and LEAs improve results for children with disabilities.

The Center's activities must include, but are not limited to, the following:

(a)(1) Providing technical assistance to States and LEAs to develop effective practices in monitoring and accountability to implement IDEA. (2) This activity must focus on assistance in data management. This includes the process of collecting accurate and effective data and the development of data systems that focus on data-based decisionmaking. (3) In addition, this project must assist States in (i) using special education data to align with State accountability standards and (ii) organizing and presenting data to decisionmakers and policymakers in an understandable and convincing manner.

(b) Identifying effective practices in monitoring and accountability.

(c) Working with OSEP, the RRCs, and the States to effectively communicate and improve results for children through technical assistance, training, and dissemination of information.

(d) Preparing and disseminating through a Web site and by other means reports and documents on research findings and related topics, including a comprehensive analysis of the monitoring literature.

(e) Maintaining communication and collaboration with other Department-funded projects concerning effective practices by States and LEAs that will improve results for children.

(f) Disseminating findings through collaboration with the National Information Center for Children and Youth with Disabilities and the Regional Resource and Federal Centers Network.

(g) Providing technical assistance and support to OSEP's Monitoring and State Improvement Planning Division.

(h) Presenting findings and providing training at national and regional conferences; and

(i) Using an outside evaluator to measure the progress of the Center.

The Center must also do the following:

(a) Establish, maintain, and meet, as needed, with an advisory committee to review and advise on the Center's activities and progress. The advisory committee must consist of individuals whose organizations or perspectives were part of the group that worked with OSEP on focused monitoring. The committee must include, but is not limited to, representatives of SEAs and LEAs, individuals with disabilities, parents, educators, professional organizations, advocacy groups, researchers, and other appropriate groups. The committee also must include membership from otherwise underrepresented populations.

(b) In addition to the annual two-day Project Directors' Meeting mentioned in the ''General Requirements'' section of this notice, budget for two additional two-day trips annually to Washington, DC (1) to attend a Project Directors' meeting and (2) to meet and collaborate with the OSEP Project Officer and other funded projects for purposes of cross-project collaboration and information exchange.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, APPLICATION NOTICE FOR FISCAL YEAR 2002

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year) *	Estimated number of awards
84.324V Research and Training Center on Scientifically Based Practices and Succesful Early Childhood Transitions	07/17/02	08/19/02	09/19/02	$700,000	1
84.324G Center on Early Identification, Child Find, and Referral of Young Children with Disabilities	07/17/02	08/19/02	09/19/02	700,000	1
84.324Q Center on Students Requiring Intensive Social, Emotional, and Behavioral Interventions	07/17/02	08/19/02	09/19/02	700,000	1
84.325G Center for Educating and Providing Early Intervention Services to Children with Autism and Austistic Spectrum Disorders	07/17/02	08/19/02	09/19/02	1,000,000	1
84.325J Center to Guide Personnel Preparation Policy and Practice in Early Intervention and Preschool Education (Birth to 5)	07/17/02	08/19/02	09/19/02	600,000	1
84.325M Statewide Models for Ensuring that Special Education Students in Inclusive Schools are Served by Highly Qualified Teachers	07/17/02	08/19/02	09/19/02	1,000,000	1
84.325R Research and Training Center to Prepare Personnel to Promote Parent and Professional Collaboration	07/17/02	08/19/02	09/19/02	650,000	1
84.325T Center for Children with Other Health Impairments, Traumatic Brain Injury, Orthopedic Impairments and Developmental Delays Who Have Neurologically Based Disabilities	07/17/02	08/19/02	09/19/02	650,000	1
84.326E Technical Assistance Center on Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education	07/17/02	08/19/02	09/19/02	$700,000	1
84.326K Center to Improve Access to the General Education Curriculum for Students with Disabilities at the Elementary and Middle School Levels	07/17/02	08/19/02	09/19/02	1,800,000	1
84.326L Center to Promote Involvement by Minority Institutions in Discretionary Programs under IDEA	07/17/02	08/19/02	09/19/02	1,656,000	1
84.326Y National Center on Monitoring and Evidence-Based Decisionmaking	07/17/02	08/19/02	09/19/02	1,000,000	1

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.

For Applications Contact: If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html;* or you may contact Ed Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from Ed Pubs, be sure to identify the competition in this notice by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: If you want additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

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Register, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*

Program Authority: 20 U.S.C. 1405, 1461, 1472, 1473, and 1485.

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–17882 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
July 16, 2002

Part IV

Department of Education

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.206A]

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program

ACTION: Notice of clarification, correction, and limited purpose closing date extension for the Jacob K. Javits Gifted and Talented Students Education Program fiscal year (FY) 2002 competition.

SUMMARY: The Assistant Secretary publishes this clarification and correction notice to reconcile differences between the **Federal Register** notice announcing this year's Jacob K. Javits Gifted and Talented Students Education Program competition and the Department's application package for this program. This notice also extends the closing date for the limited purpose of allowing program applicants that transmitted their applications by July 9, 2002, to supplement or revise their applications in light of these differences.

SUPPLEMENTARY INFORMATION: On May 24, 2002, the Assistant Secretary published a notice in the **Federal Register** (67 FR 36583 through 36586) inviting applications for new awards for the Jacob K. Javits Gifted and Talented Students Education Program. The notice stated that the application package would be available to eligible entities on May 24, 2002. Some of the information contained in the application package provided to applicants was different from the May 24, 2002 **Federal Register** notice. Although the notice was correct, because these differences may have caused confusion among this year's applicants, the Assistant Secretary hereby provides the following clarifications regarding length of project periods, award amounts, and application length:

—Priority 1: The Assistant Secretary will consider for funding applications proposing projects of up to 5 years (60 months) and annual budgets within an estimated range of between $400,000 and $600,000;

—Priority 2: The Assistant Secretary will consider for funding applications proposing projects of up to 3 years (36 months) and annual budgets within an estimated range of between $200,000 and $300,000; and

—There are no page restrictions applicable to this competition. Thus, the Assistant Secretary will consider for funding applications that are 25 pages long, as well as those that are shorter or longer than 25 pages.

In addition, due to the incorrect closing date provided in the application package, the Assistant Secretary will accept applications that were transmitted on July 9, 2002. Also, because applicants may have been confused by some of the information provided in the application package, the Assistant Secretary will allow applicants that transmitted timely applications by July 9, 2002, to supplement or revise their applications. The Assistant Secretary hereby extends the closing date in this competition for this limited purpose to July 23, 2002. The Department must receive all supplements or revisions by this date. Due to recent disruptions to mail delivery and to ensure timely receipt by the Department, applicants submitting supplements or revisions in response to this notice are strongly encouraged to utilize a commercial delivery method such as Federal Express or United Parcel Service, or a courier service. Applicants using a commercial carrier are directed to follow the appropriate mailing and hand delivery instructions contained in their application package for this competition.

The Assistant Secretary is not requiring applicants to supplement or revise their applications. If an applicant chooses not to supplement or revise its application and its application was transmitted by July 9, 2002, the Department will consider and review its initial application.

FOR FURTHER INFORMATION CONTACT: Emily McAdams, U.S. Department of Education, Room 5W252, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–8753 or the following e-mail or Internet address: *emily.mcadams@ed.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay service (FIRS) at 1–800–877–8339.

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To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index/html.

Program Authority: 20 U.S.C. 7253 *et seq.*

Dated: July 12, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18032 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
July 16, 2002

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Internet Crimes Against Children Task Force Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1353]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Based on the availability of appropriations, notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children (ICAC) Task Force Program. In an effort to expand ICAC Regional Task Force coverage to areas that do not have a current ICAC Regional Task Force presence, this solicitation is limited to State and local law enforcement agencies in the following States and localities: Georgia, Indiana, Kentucky, Louisiana, Missouri, and the Greater San Francisco Bay area, California. Only one grant will be awarded per State listed above. This program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses committed by offenders who use online technology to victimize children.

DATES: Applications must be received by August 30, 2002.

ADDRESSES: All application packages must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. (See ''Delivery Instructions'' below for additional information.) Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available on OJJDP's Web site at *www.ojjdp.ncjrs.org/grants/2000_app_kit/index.html.* (See ''Application Format'' in this program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Ron Laney, Director, Child Protection Division, and ICAC Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–3637. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children. Throughout this program announcement, ''Internet crimes against children'' refers to the sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized the Internet's educational and recreational opportunities with astonishing speed and casualness. Adapting information technology to meet everyday needs, young people are increasingly going online to meet friends, satisfy information needs, purchase goods and services, and complete school assignments. Currently, 28 million children and teenagers have access to the Internet, and industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to civilization's greatest museums, libraries, and universities, it also increases their risk of being sexually exploited or victimized.

Large numbers of young people are encountering sexual solicitations they did not want, sexual material they did not seek, and, in the most serious cases, are being targeted by offenders seeking children for sex. Research conducted by the University of New Hampshire revealed that one in five children between ages 10 and 17 received a sexual solicitation over the Internet in 1999. One in thirty-three received an aggressive solicitation from a solicitor who asked to meet them somewhere, called them on the telephone, or sent them mail, money, or gifts.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders [1] no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. More insidious than the exchange of sexually explicit material among adults, child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control future victims. Pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, pornography is often used as blackmail to ensure the child's silence; when posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the proliferation of child pornography, and the lure of predators searching for unsupervised contact with underage victims present a significant threat to the health and safety of children and a formidable challenge for law enforcement today and into the foreseeable future. Many factors complicate law enforcement's response to these challenges. Conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace, and very few investigations begin and end within the same geographical area. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Evidence collection in ICAC investigations invariably requires specialized expertise and equipment. Preferential sex offenders tend to be avid recordkeepers, and their computers, magnetic media, and related equipment can be rich sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, specific legal issues regarding property and privacy rights may be triggered by the seizure of computers and related technology.

Routine interviewing practices are inadequate for collecting testimonial evidence from child victims of Internet crimes. Some children deny they are victims because of embarrassment or fear of ridicule from their peers or

[1] For the purposes of this program, ''preferential sex offenders'' are defined as individuals whose primary sexual focus is children.

discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a part of law enforcement's response to cases involving child victims. In addition to ensuring that injuries or diseases related to the victimization are treated, forensic medical examinations provide crucial corroborative evidence.

These factors will almost routinely complicate the investigative process. Although no two cases raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach will more likely result in successful prosecutions.

A variety of Federal activities are assisting and can further assist in law enforcement's response to these offenses. For example, the Innocent Images initiative, managed by the Federal Bureau of Investigation's (FBI's) Baltimore Field Division, works specifically on computer-facilitated child sexual exploitation cases. The U.S. Customs Service (USCS) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases.

The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice prosecutes Federal violations and offers advice and litigation support to Federal, State, and local prosecutors working on child pornography and sexual exploitation cases.

With support from OJJDP and private-sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the national resource center and clearinghouse for issues involving missing and exploited children. NCMEC's Training Division coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities. The CyberTipline (*http://missingkids.com*) collects online reports from citizens and Internet Service Providers (ISPs) regarding the computer-facilitated sexual exploitation of children and rapidly forwards this information to the law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided law enforcement officers with information that has enabled them to both arrest individuals seeking sex with underage victims and safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, USCS, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen awareness program, and two pamphlets (*Child Safety on the Information Highway* and *Teen Safety on the Information Highway*) that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information regarding NCMEC's services for children, parents, educators, and law enforcement officers can be obtained by calling 800–THE–LOST or by accessing NCMEC's Web site at *http://www.missingkids.com*.

Since fiscal year (FY) 1998, OJJDP has awarded funds to 30 State or local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. The following jurisdictions currently receive ICAC Regional Task Force Program funding: Alabama Department of Public Safety; Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Clark County, Nevada, Las Vegas Metropolitan Police Department; Colorado Springs, Colorado, Police Department; Connecticut State Police; Cuyahoga County, Ohio, District Attorney; Dallas, Texas, Police Department; Delaware County, Pennsylvania, District Attorney; Hawaii Office of the Attorney General; Illinois State Police; Knoxville, Tennessee, Police Department; Maryland State Police; Massachusetts Department of Public Safety; Michigan State Police; Nebraska State Patrol; New York State Division of Criminal Justice Services; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; Seattle, Washington, Police Department; Sedgewick County, Kansas, Sheriff's Office; South Carolina Office of the Attorney General; Utah Office of Attorney General; Wisconsin Department of Justice; and the Wyoming Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise and offer prevention and investigative services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 800 arrests, seized more than 900 computers, and provided forensic or investigative assistance in nearly 3,000 cases.

In the 21st century, law enforcement agencies will be increasingly challenged by sex offenders who use computer technology to victimize children. To help meet this challenge, OJJDP is continuing the ICAC Regional Task Force Program, which will competitively award cooperative agreements to State and local law enforcement agencies seeking to improve their investigative responses to the computer-facilitated sexual exploitation of children.

Program Strategy

The ICAC Task Force Program seeks to enhance the nationwide response to child victimization by maintaining and expanding a State and local law enforcement network composed of regional task forces. The program encourages communities to develop multijurisdictional and multiagency responses and provides funding to State and local law enforcement agencies to help them acquire the knowledge, personnel resources, and specialized equipment needed to prevent, interdict, or investigate ICAC offenses. Although the ICAC Task Force Program emphasizes law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

OJJDP Program Management

During the past 3 years of managing the ICAC Task Force Program, OJJDP has made the following observations:

- The Internet challenges traditional thinking about law enforcement jurisdiction and renders city, county, and State boundaries virtually meaningless. Because of this jurisdictional ambiguity, offenders are often able to frustrate enforcement actions and conceal their criminal activities.
- Nearly all ICAC investigations (95 percent) involve substantial communication and coordination efforts among Federal, State, and local law enforcement agencies. Without

meaningful case coordination, law enforcement agencies may inadvertently investigate identical suspects and organizations, target undercover operatives of other law enforcement agencies, or disrupt clandestine investigations of other agencies.

- The obvious need for interagency cooperation and coordination has sustained interest in maintaining standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies—referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.
- The clandestine nature of undercover operations, the anonymity of Internet users, and the unclear jurisdictional boundaries of cyberspace significantly exacerbate these investigative concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement agencies to go on the offensive and, most importantly, protect children from revictimization. Although carefully managed undercover operations by well-trained officers can be very effective, these operations also generate concerns regarding legal issues, coordination, communication, and resource management.
- Although Internet awareness appears to be growing, many children, teenagers, and parents are not sufficiently informed about the potential dangers and repercussions of releasing personal information to, or meeting with, individuals encountered online.
- Although Federal agencies are responsible for monitoring illegal interstate or telecommunications activities, the protection of children is primarily the responsibility of State and local law enforcement agencies. The production of pornography or the sexual assault of a child—whether originating online or not—usually creates both a jurisdictional interest and a responsibility for State and local authorities.
- Despite the belief that these cases are usually manufactured by undercover operations in which officers pose as minors in chat rooms, most ICAC investigations are initiated in response to a citizen complaint or a request from law enforcement. Unfortunately, these cases often involve multiple victims who require a response by both local law enforcement and victim services.
- The Internet is placing a new demand on forensic resources. Computers are piling up in evidence rooms across the country because existing forensic capacity is inadequate to meet the needs of investigative efforts.
- A generation ago, officers beginning their law enforcement careers would be issued a uniform, service weapon, and notebook. Those items rarely changed during a 20-year career. Today, changes in equipment and software occur seemingly overnight, and officers are hard pressed to stay current not only with the technological changes, but also with a motivated offender community that is adapting these new technologies to exploit children.

To address these observations and concerns, OJJDP's ICAC Task Force Program employs the following management strategies:

- Maintaining and expanding the nationwide network of State and local law enforcement agencies participating in the program.
- Ensuring that ICAC Task Force personnel are adequately trained and equipped.
- Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.
- Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.
- Fostering meaningful information sharing to avoid redundant investigations or activities that could disrupt the ongoing investigations of other agencies.
- Maintaining an ICAC Task Force Board composed of local law enforcement executives and prosecutors to advise OJJDP, formulate policy recommendations, and assess the law enforcement community's needs for training and technical assistance with regard to investigating Internet crimes.
- Convening an annual ICAC Task Force training conference to focus on child exploitation, emerging technology, and its relevance to criminal activity and enforcement efforts and to enhance the networking essential for sustaining an effective State and local law enforcement response to online crime.

OJJDP established ICAC Task Force Program Standards through a collaborative process involving the 10 original ICAC Task Force agencies, the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the Task Force agencies to foster information sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals by standardizing investigative practices. In 2002, the ICAC standards were revised and updated to reflect 20 additional ICAC Regional Task Forces and an expanded ICAC program focus on the protection of children.

OJJDP has also established an ICAC Task Force Board (the Board) to assist in the administration of the ICAC Task Force Program. As a condition of the award, each grantee must designate a policy-level law enforcement official or prosecutor to be a Board member. Although the Board's primary responsibility is to serve as an advisory group to OJJDP, the Board will also encourage case coordination and facilitate information sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the Board by NCMEC, CEOS, the FBI, USCS, and USPIS.

The award also requires that each ICAC Regional Task Force member send at least one investigator and one policy-level official to an ICAC Task Force Program orientation seminar. The seminars, which were developed by OJJDP and NCMEC in consultation with Federal law enforcement agencies, provide information regarding legal issues, specific investigative techniques, undercover operation documentation requirements, behavioral characteristics of preferential sex offenders, and other topics relevant to child exploitation cases.

To learn about the next seminar scheduled at NCMEC's Jimmy Ryce Law Enforcement Training Center in Alexandria, VA, contact NCMEC at *http://www.missingkids.com.* Expenses associated with attendance at the orientation seminar will be reimbursed by OJJDP and NCMEC. Expenses associated with Board responsibilities will be covered by grant funds.

Goal

The program's goal is to enhance the ICAC investigative response of State and local law enforcement agencies.

Objectives

Projects must accomplish the following objectives:

- Develop or expand multiagency, multijurisdictional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Relevant nongovernment organizations may also be included. OJJDP encourages applicants to invite Federal law enforcement agencies to participate in the task force.

• Institute policies and procedures that comply with the OJJDP ICAC Task Force Program Standards (see ''OJJDP Program Management'' above). Requests from eligible law enforcement agencies for copies of the ICAC Program Operational and Investigative Standards must be faxed on official letterhead to the Juvenile Justice Clearinghouse at 301–519–5600.

• Enhance investigative capacity by properly equipping and training ICAC Task Force investigators. Task Force investigators should be computer literate, knowledgeable about child exploitation issues, and familiar with Federal and State statutes and caselaw pertaining to ICAC investigations.

• Develop and maintain case management systems to record offenses and investigative results, make or receive outside agency referrals of ICAC cases, and comply with the reporting requirements of the ICAC Task Force Monthly Performance Measures Report.

• Develop response protocols or memorandums of understanding that foster collaboration, information sharing, and service integration among public and private organizations that provide services to sexually exploited children.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies located in Georgia, Indiana, Kentucky, Louisiana, Missouri, or the Greater San Francisco Bay area, California. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the other(s) designated as coapplicant(s).

Selection Criteria

OJJDP is committed to establishing a network of State and local law enforcement agencies to respond to online enticement and child pornography offenses. Within this network, ICAC Task Forces positioned throughout the country will serve as regional sources of technical, educational, and investigative expertise, providing assistance to parents, teachers, law enforcement officers, and other professionals working on child sexual exploitation issues. Therefore, the goal of achieving an equitable geographic distribution of ICAC Task Forces will be considered when applicants are selected. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing ICAC Task Forces, and become part of a nationwide law enforcement network designed to protect children from computer-facilitated victimization.

Applications should include evidence of multidisciplinary, multijurisdictional partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities.

OJJDP will convene a peer review panel to evaluate and rank applications and to make funding recommendations to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only. Final award decisions will be made by the OJJDP Administrator. OJJDP will negotiate the specific terms of the award with applicants who are being considered. Applicants will be evaluated and rated according to the criteria outlined below.

Problem(s) To Be Addressed (10 points)

Applicants must clearly identify the need for this project in their communities and demonstrate an understanding of the program concept. Applicants must include data that illustrate the size and scope of the problem in their States and local jurisdictions. If statistics or other research findings are used to support a statement or position, applicants must provide the relevant source information.

Goals and Objectives (10 points)

Applicants must establish clearly defined, measurable, and attainable goals and objectives for this program.

Project Design (35 points)

Applicants must explain in clear terms how the State or local task force will be developed and implemented. They must present a clear workplan that contains program elements directly linked to the achievement of the project objectives. The workplan must indicate significant project milestones, product due dates, and the nature of the products to be delivered.

Management and Organizational Capability (30 points)

The management structure and staffing described in the application must be adequate and appropriate for the successful implementation of the project. Applicants must identify responsible individuals and their time commitments and provide a schedule of major tasks and milestones. Applicants must describe how activities that prevent Internet crimes against children will be continued after Federal funding is no longer available. In addition, signed letters of support from State and local prosecution offices and the local district United States Attorney must be provided.

Budget (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. Budgets must allow for required travel, including four trips for one individual to attend the quarterly ICAC Task Force Board meetings. Budgets must also allow for the participation of at least two agency representatives at the annual ICAC Training Conference.

Application Format

The narrative portion of this application (excluding forms, assurances, and appendixes) must not exceed 35 pages and must be submitted on 8½- by 11-inch paper and double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative and abstract do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project and Award Period

These cooperative agreements will be funded for up to an 18-month budget and project period and will begin July 1, 2002, and end December 31, 2003. Funding beyond the initial project period will be contingent upon the grantee's performance and the availability of funds.

Award Amount

The total amount available for this program is $1.8 million. OJJDP intends to award six cooperative agreements of up to $300,000 each for the 18-month project period.

Performance Measurement

To ensure compliance with the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program implemented by this grant. To ensure the accountability of this data (for which the Office of Justice Programs [OJP] is responsible) the following performance measures are provided:

• The number of technical assistance activities involving investigations.

• The number of computer forensic services provided by ICAC Task Forces and Investigative Satellites to nonfederally funded law enforcement agencies.

• The number of members and organizations involved in multidisciplinary task forces at each site.

Under this solicitation, applicants will be required to supply OJJDP with the above performance information. In addition, OJJDP will measure the performance of the ICAC Task Force Program. Data collection will be covered within the existing ICAC Monthly Performance Report (MPR) forms. MPR is a required data-reporting document that was created by OJJDP to collect ICAC data related to arrests, subpoenas, search warrants, technical assistance (investigative and computer forensic), and prevention and intervention activities performed by ICAC Regional Task Forces and ICAC Investigative Satellites. Data gathered from MPRs will track the number of arrests made and the outcomes of those arrests (plea bargains, prosecutions, etc.), assist in the identification of victims who need resources such as counseling and therapy, and track tips and aid in target area identification.

Data collected from MPRs will provide crucial baseline data necessary for a future evaluation of the ICAC Task Force Program after it has been fully established throughout the country.

Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of federally funded programs.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.543. This form is included in OJJDP's *Application Kit,* which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to *askncjrs@ncjrs.org.* The kit is also available online at *ojjdp.ncjrs.org.*

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice requests that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

''Related efforts'' is defined for these purposes as one of the following:

• Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

• Another phase or component of the same program or project (*e.g.,* to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

• Services of some kind (*e.g.,* technical assistance, research, or evaluation) rendered to the program or project described in the application.

Delivery Instructions

All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner.

OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after [XXXX] will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications Sent by U.S. Mail

Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write ''Internet Crimes Against Children Task Force Program.''

Applications Sent by Overnight Delivery Service

Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write ''Internet Crimes Against Children Task Force Program.''

Applications Delivered by Hand

Deliver by [XXXXX] to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5:00 p.m. EST, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on August 30, 2002.

Contact

For further information, contact Ron Laney, Director, Child Protection Division, and ICAC Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–3637, or send an e-mail inquiry to *laney@ojp.usdoj.gov.*

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Dated: July 11, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–17842 Filed 7–15–02; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Tuesday,
July 16, 2002

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; Disability and Rehabilitation Research Projects (DRRP) Program; Notices

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP).

SUMMARY: The Assistant Secretary announces final priorities for one Persons Aging with Hearing and Vision Loss project and one Evaluation of the Changing Universe of Disability and Systems Change Activities project under the Disability and Rehabilitation Research Projects (DRRP) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in FY 2002 and in later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

These priorities reflect issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We published a notice of proposed priorities (NPP) for the Persons Aging with Hearing and Vision Loss project and for the Evaluation of the Changing Universe of Disability and Systems Change Activities project in the **Federal Register** on April 26, 2002 (67 FR 20870). This NFP contains two changes from the NPP. Specifically, for the Persons Aging with Hearing and Vision Loss project, we have clarified that the terms ''deaf'' and ''blind'' refer to moderate to severe hearing and visual impairments and we have added the term ''primary caregivers'' to the list of examples of the types of stakeholders from whom the DRRP should seek advice. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this notice.

Except for minor revisions, there are no other changes between the NPP and this NFP.

The backgrounds for each of the priorities were published in the NPP.

Analysis of Comments and Changes

In response to our invitation in the NPP, several parties submitted comments on the proposed priorities (eight parties for the Persons Aging with Hearing and Vision Loss project and three parties for the Evaluation of the Changing Universe of Disability and Systems Change Activities). An analysis of the comments and of any changes in the priorities since publication of the NPP is published as an appendix at the end of this notice. We discuss comments under the priority to which they pertain.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Priorities

Priority 1—Persons Aging With Hearing and Vision Loss

This priority supports one DRRP on Persons Aging with Hearing and Vision Loss. The purpose of this priority is to explore ways to improve outcomes for persons who are blind or who are deaf and who are now experiencing a secondary onset of hearing loss or vision impairment resulting from aging. The terms ''deaf'' and ''blind'' as used herein refer to the moderate to severe range of hearing and visual impairments. The DRRP will conduct research, development, training, and dissemination activities and evaluate model approaches for improving employment and community integration options, including more viable communication systems, for such individuals who are 55 years of age, or older. In carrying out this purpose the DRRP must:

(1) Investigate the prevalence of age-related onset of deafness among older American blind individuals and age-related onset of blindness among older American deaf individuals and the impact on the employment and community integration options, including more viable communication systems for each population;

(2) Identify and evaluate technology and service delivery options, such as transportation, housing, and community integration activities for individuals with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging;

(3) Identify and evaluate access to use of technologies, including assistive devices and telecommunication or other existing communication systems, such as tactile interpreter support, needed to assist persons with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging; and

(4) Using available dissemination mechanisms, with appropriate assistive technical modification, disseminate findings, and develop strategies to educate both consumers and providers, especially vocational rehabilitation workers, in use of these techniques.

In addition, the DRRP must:

- Coordinate the efforts of this DRRP with other NIDRR, Office of Special Education Programs (OSEP), and Rehabilitation Services Administration (RSA) projects that address related activities such as Blindness, Deafness, Deaf-Blind, Aging, Accessible Housing, Accessible Transportation, Telecommunication, Independent Living, and Interpreter Training programs;
- Solicit direct input from stakeholders (e.g., persons who are deaf, blind, and deaf-blind; service providers; primary caregivers; and employers) as part of the ongoing planning, development, and implementation of the DRRP's research activities;
- Demonstrate efforts to secure supplementary funding that will permit the DRRP more latitude in exploring additional related studies, in addition to

the Federal monies available from this NIDRR grant; and

• Identify and investigate a study population that includes a balanced sample of subjects representative of national demographics.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

This priority supports a DRRP on the Evaluation of the Changing Universe of Disability and Systems Change Activities. The purpose of the priority is to evaluate the implications over time of systems change activities for populations within the changing universe of disability.

The DRRP must:

(1) Identify and evaluate existing or proposed data systems that can be used to monitor systems change activities at the State or Federal level or both, including policy changes related to the NFI, the Workforce Investment Act of 1998, and the 1999 Olmstead decision (*Olmstead* v. *L.C.,* 527 U.S. 581);

(2) Identify, evaluate, and project the impact of systems change activities and new policies for people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(3) Develop proposals for new systems or data variables, or changes, as necessary, to existing data systems that will facilitate use of such data to eliminate gaps in the availability of mechanisms to monitor the impact of systems change activities on people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(4) Disseminate findings and recommendations to modify monitoring data systems or to institute new monitoring approaches; and

(5) Conduct research to identify and evaluate the implications of policy changes or other systems change activities on public and private rehabilitation programs and services for persons with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved.

In carrying out these purposes the applicant must:

• Involve consumers or their families, as appropriate, in all stages of the research and demonstration endeavor;

• Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of individuals with disabilities from diverse backgrounds;

• By the end of the fourth year, convene a national conference to disseminate and discuss information about the effect of systems change activities on persons with newly emergent disabilities or changing manifestations of disability or both including those who are unserved and underserved and proposals to address gaps in such activities;

• Serve as a resource to researchers, consumers and consumer groups, planners, and policymakers for conceptual and statistical information that addresses the changing universe of disability, including systems change issues.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and, Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Priority 1—Persons Aging With Hearing and Vision Loss

Comment: Three commenters expressed strong support for the priority, and gave examples of how their own current activities reflect sensitivity to the needs of the target populations.

Discussion: NIDRR appreciates the broad support that these comments provide.

Change: None.

Comment: One commenter, in addition to offering support for the priority, also offered the service of their Unit Director as a resource person to whomever the project is awarded.

Discussion: While NIDRR appreciates the offer of support, it will be up to each applicant to determine with whom they will negotiate involvement in the project.

Change: None.

Comment: One commenter expressed concern that the differential impact of hearing loss on persons with different types of visual impairments, such as central or peripheral loss, be noted in the research.

Discussion: NIDRR has given applicants an opportunity to define the scope of the population study in item One of the priority. It is the applicant's responsibility to establish the scope of their definition. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter recommended several research activities for inclusion in any research project on the subject populations, stating that these areas are important and are supported in the literature cited.

Discussion: The applicants are expected to be familiar with the need for new research as well as with relevant past studies. Applicants are responsible for determining which citations of specific research should be incorporated in the application submitted and the peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter suggested that the priority's scope might be enhanced by adding the term ''primary caregivers'' to the second bullet item.

Discussion: NIDRR agrees this adds clarity to the intent.

Change: The term has been added.

Comment: Two commenters expressed concern about the scope of the definition for the terms ''deaf'' and ''blind'' and whether, in each case, NIDRR intends for these terms to be all inclusive. One commenter offered the current Veteran Administration (VA) definition as an example.

Discussion: NIDRR uses the terms ''deaf'' and ''blind'' to be inclusive of moderate to severe hearing and visual impairments. NIDRR suggests that the applicants cite whatever references they believe best fits their research intent.

Change: At the end of the second sentence, after the word aging, further clarification is added.

Comment: One commenter suggested that such a study will be incomplete without including similar information from a broader subject base, specifically (a) from persons with both sensory impairments acquired at an early age; (b) persons who acquire these impairments late in life; and (c) from persons with both sensory impairments who are institutionalized.

Discussion: NIDRR believes that it is the applicant's responsibility to determine and defend the inclusion or exclusion of any population segments within the broader populations. The priority encourages the applicant to seek additional research funding

from other sources if the initial efforts support broader endeavors.

Changes: None.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

Comments: One commenter recommended that the scope of work be expanded to address other policy developments including welfare reform, recent U.S. Supreme Court decisions about the definition of disability, and the Ticket to Work and Work Incentives Improvement Act.

Discussion: An applicant could propose a study pertaining to these; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Change: None.

Comments: Two commenters noted the extensive scope of data sources available to monitor systems change. These sources reflect variations in types of services provided, agency needs to measure outcomes, target populations and their descriptors, units of analysis, specification of legal definitions of disability under the ADA, and scientific rigor of the measures.

Discussion: Applicants may choose from a variety of methodologies to identify and evaluate appropriate data systems within the scope of the priority.

Change: None.

Comments: Two commenters indicated that a substantial interagency effort is needed to develop a coherent framework and outcome-based methodologies for evaluation of the impact across time of policy changes for all persons with disabilities.

Discussion: As the commenters indicated, there are many substantive issues to be addressed beyond those specified in this priority. However, past research regarding shifts in the universe of individuals with disabilities has demonstrated difficulties in using available data sources to characterize a diverse and dynamic population. Such data are needed to develop appropriate interventions to address the needs of people with newly emergent or changing manifestations of disability.

Change: None.

[FR Doc. 02–17883 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133A]

National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and (b) The program regulations 34 CFR part 350, this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). The DRRP supports activities designed to maximize the full inclusion and self-sufficiency of individuals with disabilities, especially the most severe disabilities.

This competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 2002: DISABILITY REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Application available	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.133A–7: Persons aging with hearing and vision loss.	(July 16, 2002).	(August 15, 2002	$500,000	$500,000	1	60
84.133A–15: Evaluation of the changing universe of disability and systems change.	(July 16, 2002).	(August 15, 2002).	300,000	300,000	1	60

* **Note:** We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The Department is not bound by any estimates in this notice.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for these programs, published elsewhere in this issue of the **Federal Register**. The priorities are:

Priority 1—Persons Aging With Hearing and Vision Loss

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

For FY 2002 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well the additional selection criterion is met. The additional selection criteria is found elsewhere in this notice.

(a) *Responsiveness to an absolute or competitive priority* (6 points).

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority. (3 points)

(ii) The extent to which the applicant's proposed activities are likely

to achieve the purposes of the absolute or competitive priority. (3 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors. The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the art; (7 points)

(B) Each research hypothesis is theoretically sound and based on current knowledge; (8 points)

(C) Each sample population is appropriate and of sufficient size; (8 points)

(D) The data collection and measurement techniques are appropriate and likely to be effective; (9 points)

(E) The data analysis methods are appropriate. (8 points)

(c) *Design of dissemination activities* (8 points).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format. (4 points)

(ii) The extent to which the materials and information to be disseminated and the formats and the methods for dissemination are appropriate to the target population. (2 points)

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities. (2 points)

(d) *Plan of operation* (8 points).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (8 points)

(e) *Collaboration* (5 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project. (3 points)

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant. (2 points)

(f) *Adequacy and reasonableness of the budget* (5 points).

(1) The Secretary considers the adequacy and the reasonableness of the budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities. (3 points)

(ii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner. (2 points)

(g) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; (5 points) and

(ii) Are objective, and quantifiable or qualitative, as appropriate. (5 points)

(h) *Project staff* (8 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project. (2 points)

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas. (2 points)

(i) *Adequacy and accessibility of resources* (10 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The quality of an applicant's past performance in carrying out a grant. (1 point)

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research. (8 points)

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project. (1 point)

Additional Selection Criterion (10 points)

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more *75* numbered, double-spaced (no more than 3 lines per vertical inch) 8″ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [add program number and title]), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [add program number and title]), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

Part I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.

Part II: Budget Form—Non-Construction Programs (ED 524) and instructions.

Part III: Application Narrative.

Part IV: Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (*Note:* ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

You may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. We will not award a grant unless we have received a complete application form.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information.

If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure that My Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out if My Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 84

Title: _____

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.)

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
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